

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

In the Matter of _____)
_____)
GENERAL ELECTRIC COMPANY,)
a corporation. _____)
_____)
_____)
_____)
_____)

Docket No. C-
DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed Acquisition by Respondent General Electric Company (“GE”), hereinafter referred to as “Respondent,” of certain assets of Agfa-Gevaert N.V. (“Agfa”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present 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 Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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 Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets (attached to this Order as Appendix I), and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of

thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent GE is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut 06431.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of 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. “GE” or “Respondent” means General Electric Company, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by General Electric Company (including, but not limited to, the GE Power Systems business of General Electric Company, General Electric Inspection Services, Inc., and Panametrics, Inc.), and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- B. “Agfa” means Agfa-Gevaert N.V., a corporation organized, existing, and doing business under and by virtue of the laws of Belgium, with its offices and principal place of business located at Septestraat 27, B-2640 Morstel, Belgium; and joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Agfa.
- C. “R/D Tech” means R/D Tech, Inc., a corporation organized and existing under the laws of the Province of Quebec, with its offices and principal place of business located at 505, boul. du Pare-technologie, Quebec, Quebec, Canada G1P 4S9.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquisition” means the proposed Acquisition by Respondent of certain assets of Agfa by means of a Stock and Asset Purchase Agreement dated as of January 17, 2003, and the amendment to the Stock and Asset Purchase Agreement dated September 19, 2003, by and between Agfa and Respondent.
- F. “R/D Tech Asset Purchase Agreement” means the Asset Purchase Agreement by and

between Panametrics as Seller, GE as the parent of Seller, and R/D Tech as Purchaser, dated as of October 27, 2003, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Panametrics Ultrasonic NDT Assets to be divested to accomplish the requirements of this Order. The R/D Tech Asset Purchase Agreement is attached to this Order as non-public Appendix II.

- G. “Agency(ies)” means any governmental regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s) or permit(s) for any aspect of the research, development, manufacture, marketing, distribution or sale of Ultrasonic NDT equipment.
- H. “Closing Date” means the date on which Respondent (or a Divestiture Trustee) divests to the Commission-approved Acquirer the Panametrics Ultrasonic NDT Assets completely and as required by Paragraph II of this Order.
- I. “Commission-approved Acquirer” means either R/D Tech or any other entity that receives the prior approval of the Commission to acquire the Panametrics Ultrasonic NDT Assets, pursuant to Paragraph II of this Order.
- J. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondent that is not in the public domain related to the research, development, engineering, manufacture, use, distribution, cost, pricing, supply, marketing, sale, or after-sale servicing of Ultrasonic NDT.
- K. “Costs” means all direct and indirect costs, including, but not limited to, labor, materials, and appropriately allocated overhead expenses and depreciation of capital equipment, but “Costs” does not include general administrative expenses.
- L. “Divestiture Agreement” means either the R/D Tech Asset Purchase Agreement or any other agreement that receives the prior approval of the Commission between Respondent and a Commission-approved Acquirer (or between a trustee appointed pursuant to Paragraph IV of this Order and a Commission-approved Acquirer) related to the Panametrics Ultrasonic NDT Assets required to be divested pursuant to Paragraph II of this Order.
- M. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.
- N. “Effective Date” means the date the Acquisition is consummated.
- O. “Employee Notification” means the “Notice of Divestiture and Requirement for Confidentiality” attached to this Order as Appendix III and to the Order to Maintain Assets as Appendix B.

- P. “Flaw Detector” means an Ultrasonic NDT Product used to detect and characterize internal defects and anomalies in materials.
- Q. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental Agency or governmental commission or any judicial or regulatory authority of any government.
- R. “Indirect Sales Representatives and Distributors” means the individuals directly or indirectly employed by or under contract with Respondent who sell or distribute Panametrics Ultrasonic NDT Products (irrespective of the portion of working time involved) listed in this Order at Schedule 3.12 (a) of non-public Appendix II.
- S. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the Order to Maintain Assets.
- T. “NDT” or “NDT Product” means any nondestructive testing equipment or system, excluding GE medical and process control products, used for the examination of materials and components without damaging or destroying them.
- U. “Non-NDT Product” means any product, other than NDT Products, including, but not limited to, GE medical and process control products, researched, developed, manufactured, used or sold by Respondent, before the Effective Date.
- V. “Non-Ultrasonic NDT Product” means any NDT Product, other than Ultrasonic NDT Products, researched, developed, manufactured, used or sold by Respondent, before the Effective Date.
- W. “Panametrics” means Panametrics, Inc., an affiliate of the GE Power Systems business of General Electric Company, and its subsidiaries Panametrics Japan Co. Ltd., Panametrics Pty., Ltd., IGE Energy Services (UK) Ltd., Panametrics BV, Panametrics GmbH, Panametrics Srl, Panametrics AB, and Panametrics Instrumentacion SL.
- X. “Panametrics Shared Intellectual Property” means all of the intellectual property that Respondent can demonstrate to the Commission has been routinely used, prior to the Effective Date, in the research, development, manufacture, distribution, marketing, servicing, or sale of Ultrasonic NDT Products and in the manufacture, distribution, marketing, servicing, or sale of Non-NDT Products.
- Y. “Panametrics Ultrasonic NDT Assets” means all of Respondent’s rights, title and interest held before the Effective Date, in and to all assets related to the Panametrics Ultrasonic NDT Business, to the extent legally transferable, including the research, development, manufacture, use, distribution, marketing, servicing or sale of Ultrasonic NDT including, without limitation, the following:

1. all the product lines and related brands identified in Appendix IV;
2. all Ultrasonic NDT Intellectual Property;
3. an exclusive, perpetual, royalty-free worldwide license to make, use, sell, practice any process or method, import, export, or otherwise dispose of the Ultrasonic NDT Licensed Intellectual Property; *provided, however*, that, if R/D Tech is the Commission-approved Acquirer, then the required term of the license shall be that provided for in the R/D Tech Asset Purchase Agreement;
4. all Ultrasonic NDT Manufacturing Equipment;
5. all Ultrasonic NDT Software;
6. the identity of all customers of Ultrasonic NDT during the period from January 1, 1998, to the Effective Date and detailed information as to the pricing, product mix, and other terms (including, but not limited to, supply or rebate agreements) of Ultrasonic NDT for such customers;
7. at the Commission-approved Acquirer's option, each of the Ultrasonic NDT Assumed Contracts;
8. all unfilled customer orders for Ultrasonic NDT existing before the Effective Date (Respondent shall provide a list of such orders to the Commission-approved Acquirer within two (2) days after the Closing Date);
9. at the Commission-approved Acquirer's option, all inventories of Ultrasonic NDT in existence before the Effective Date, including, but not limited to, raw materials, work in process, and finished goods; and
10. all documents (including, but not limited to, computer files, electronic mail, and written, recorded, and graphic materials) related to the Panametrics Ultrasonic NDT Assets, including, but not limited to, the following specified documents: reports relating to the research and development of Ultrasonic NDT or of any materials used in the research, development, manufacture, marketing or sale of Ultrasonic NDT; all market research data and market intelligence reports; customer information; all records relating to employees that accept employment with the Commission-approved Acquirer (excluding any personnel records the transfer of which is prohibited by applicable law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to Ultrasonic NDT; all diagrams and schematics relating to Ultrasonic NDT; all analytical and quality control data; and all correspondence with Agencies relating to Ultrasonic NDT, but excluding (i) all tax returns, financial statements, and working papers of Panametrics relating to Non-NDT

Products and Non-Ultrasonic NDT Products; and (ii) documents and other information subject to attorney-client privilege relating to Non-NDT Products and Non-Ultrasonic NDT Products;

Provided, however, that, if a document required to be produced pursuant to Paragraph I.Y.10 of this Order also contains information that is not related to the Panametrics Ultrasonic NDT Assets, Respondent need not produce that information to the extent it is contained within a discrete segment of the document that otherwise must be produced.

Provided further, that the Commission-approved Acquirer shall be allowed access to redacted copies of such documents otherwise excluded by Paragraph I.Y.10(i and ii) of this Order to the extent they relate to Ultrasonic NDT.

- Z. “Panametrics Ultrasonic NDT Business” means Panametrics’ entire business relating to Ultrasonic NDT.
- AA. “Panametrics Ultrasonic NDT Employees” means:
1. if R/D Tech is the Commission-approved Acquirer of the Panametrics Ultrasonic NDT Assets, all of those individuals listed in this Order at Schedule 3.12 (a) of non-public Appendix II; or
 2. if R/D Tech is not the Commission-approved Acquirer of the Panametrics Ultrasonic NDT Assets, all of those individuals employed by Respondent (irrespective of the portion of working time involved) with any responsibility for the research, design, development, engineering, manufacturing, distributing, marketing, sales, or after-sales service and support of Panametrics Ultrasonic NDT Products worldwide within the eighteen (18) month period immediately prior to the Closing Date.
- BB. “Patents” means all Patents, patent applications and statutory invention registrations, in each case possessed or owned by Panametrics prior to the Effective Date, including all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for Patents and registrations thereto in the world, related to the manufacture, use, sale, service research or development of Ultrasonic NDT.
- CC. “Phased Array NDT” means Ultrasonic NDT technology that uses an array of transducers combined on a single probe to emit sound waves at different angles and intervals capable of creating a three-dimensional image of scanned material to inspect the structure and tolerance of materials without damaging or deforming them.
- DD. “Stationary Scanning System” means an Ultrasonic NDT Product that is a large mechanical

device for the inspection of industrial parts and is capable of automated or manual use as a Thickness Gage and/or a Flaw Detector.

EE. “Thickness Gage” means an Ultrasonic NDT Product used to measure the thickness of a material or structure.

FF. “Transducer” means an Ultrasonic NDT Product that imparts sound energy to the test material and receives sound energy reflected from the test material.

GG. “Ultrasonic NDT” or “Ultrasonic NDT Product” means NDT that uses ultrasound as the inspection modality, including, but not limited to, Flaw Detectors, Thickness Gages, Transducers, Phased Array NDT and Stationary Scanning Systems.

HH. “Ultrasonic NDT Assumed Contracts” means all contracts or agreements to which Respondent is a party to the extent related to Ultrasonic NDT and that existed before the Effective Date, as follows:

1. if R/D Tech is the Commission-approved Acquirer, Ultrasonic NDT Assumed Contracts include, but are not limited to, contracts listed in this Order at Schedule 3.11(b) of non-public Appendix II;

2. if R/D Tech is not the Commission-approved Acquirer, Ultrasonic NDT Assumed Contracts include, but are not limited to:

- a. third party purchase contracts or agreements for the purchase of Ultrasonic NDT from Panametrics;

- b. contracts or agreements for Panametrics’ purchases of any materials from any third party for use related to the manufacture, use, sale, service, research or development of Ultrasonic NDT;

- c. contracts or agreements related to the manufacture of Panametrics Ultrasonic NDT;

- d. confidentiality agreements related to Ultrasonic NDT; and

- e. royalty, licensing or similar arrangements related to Ultrasonic NDT.

II. “Ultrasonic NDT Intellectual Property” means all of the following possessed or owned by Respondent before the Effective Date and related to Ultrasonic NDT:

1. Patents;

2. Ultrasonic NDT Manufacturing Technology;

3. Ultrasonic NDT Scientific and Regulatory Material;
4. Ultrasonic NDT Research, Design and Development; and
5. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing.

Provided, however, that “Ultrasonic NDT Intellectual Property” does not include the Ultrasonic NDT Licensed Intellectual Property.

JJ. “Ultrasonic NDT Licensed Intellectual Property” means rights within the field of use of Ultrasonic NDT to:

1. the fourteen (14) patents or patent applications used by Respondents for Non-NDT Products or Non-Ultrasonic NDT Products that are identified in Appendix V of this Order;
2. Ultrasonic NDT Trademarks, including the goodwill of the business symbolized thereby and associated therewith that are identified in Appendix VI of this Order;
3. Ultrasonic NDT Trade Dress; and
4. the know-how related to Ultrasonic NDT Manufacturing Technology and Ultrasonic NDT Research, Design, and Development that is Panametrics Shared Intellectual Property.

Provided, however, that “Ultrasonic NDT Licensed Intellectual Property” does not include the “General Electric” or “GE” names or logos in any form.

KK. “Ultrasonic NDT Manufacturing Equipment” means all of Panametrics’ rights and ownership in equipment, machines, and computers, and all parts, information, files, diagrams, schematics, instructions, software, and hardware related thereto, used in the manufacture, quality assurance and quality control, and packaging of Ultrasonic NDT.

LL. “Ultrasonic NDT Manufacturing Technology” means all technology, trade secrets, know-how, diagrams, schematics, software, calibrations, inventions, practices, proprietary algorithms, testing techniques, methods and other confidential or proprietary information related to the manufacture, quality assurance and quality control, and packaging of Ultrasonic NDT owned or used by Panametrics before the Effective Date, including, but not limited to, manufacturing records, sampling records, standard operating procedures and batch records related to the manufacturing process, and supplier lists.

MM. “Ultrasonic NDT Research, Design and Development” means intellectual property, materials and documents related to the research, design and development of Ultrasonic

NDT, owned or used by Panametrics before the Effective Date, including, but not limited to, research materials, technical information, inventions, and other confidential or proprietary information related to research, design and development.

- NN. “Ultrasonic NDT Scientific and Regulatory Material” means all technological, scientific, chemical, and electrical materials and information related to Ultrasonic NDT owned or used by Panametrics before the Effective Date, and all rights thereto, in any and all jurisdictions.
- OO. “Ultrasonic NDT Software” means computer programs, including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to any Panametrics Ultrasonic NDT Product; *provided, however*, that “Ultrasonic NDT Software” does not include software that is readily purchasable or licensable and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- PP. “Ultrasonic NDT Trade Dress” means all trade dress of Ultrasonic NDT distributed, marketed, or sold by or on behalf of Panametrics before the Effective Date, including, but not limited to, product packaging associated with the sale of such Ultrasonic NDT worldwide and the lettering of such Ultrasonic NDT trade names or brand names; *provided, however*, that Ultrasonic NDT Trade Dress does not include the “General Electric” or “GE” name or logo in any form.
- QQ. “Ultrasonic NDT Trademarks” means all trademarks, trade names and brand names including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for Ultrasonic NDT researched, developed, distributed, marketed, or sold by or on behalf of Respondent before the Effective Date; *provided, however*, that Ultrasonic NDT Trademarks do not include the “General Electric” or “GE” name or logo in any form.

II.

IT IS FURTHER ORDERED that:

- A. If R/D Tech is the Commission-approved Acquirer and if the R/D Tech Asset Purchase Agreement is approved by the Commission, then not later than twenty (20) days after the Effective Date, Respondent shall divest the Panametrics Ultrasonic NDT Assets as an ongoing business to R/D Tech pursuant to and in accordance with the R/D Tech Asset Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of R/D Tech or to reduce any obligations of

Respondent under such agreement), and such agreement is incorporated by reference into this Order and made part hereof as non-public Appendix II.

Provided, however, that:

1. to the extent Respondent is required by this Order to assign Ultrasonic NDT Assumed Contracts to the Commission-approved Acquirer, where any such Ultrasonic NDT Assumed Contract also relates to Non-NDT Product(s) or Non-Ultrasonic NDT Product(s), Respondent shall assign the Commission-approved Acquirer all such rights under the contract or agreement as are related to Ultrasonic NDT, but concurrently may retain similar rights as are related to the Non-NDT Product(s) and Non-Ultrasonic NDT Product(s);
 2. in cases in which documents or other materials included in the Panametrics Ultrasonic NDT Assets contain information that (i) relates both to Ultrasonic NDT and to Non-NDT Products or Non-Ultrasonic NDT Product(s), and (ii) cannot be segregated in a manner that preserves the usefulness of the information as it relates to Ultrasonic NDT, Respondent shall be required only to provide copies of the documents and materials containing this information; *provided, however*, that Respondent shall, (a) wherever possible, redact the information contained in such documents or other materials retained pursuant to Paragraph II.A.2 of this Order and relating to Ultrasonic NDT Products; and (b) notify its employees that may have copies of documents described in Paragraph II.A.2 of this Order of the redactions Respondent has made to such documents; *provided further*, that Respondent may also redact information contained in the copies of documents or other materials relating to Non-NDT Products or Non-Ultrasonic NDT Products that it is required to provide to the Commission-approved Acquirer. In instances where such copies are provided to the Commission-approved Acquirer, and within thirty (30) days of giving notice to Respondent, the Commission-approved Acquirer shall have access to original documents under circumstances where copies of documents are insufficient, for example, for evidentiary or regulatory purposes; and
 3. if Respondent has divested the Panametrics Ultrasonic NDT Assets to R/D Tech prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that R/D Tech is not an acceptable acquirer of the Panametrics Ultrasonic NDT Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondent shall immediately rescind the transaction with R/D Tech and shall divest the Panametrics Ultrasonic NDT Assets, absolutely and in good faith, within ninety (90) days of rescission to a Commission-approved Acquirer in a manner that satisfies the requirements of Paragraph II of this Order.
- B. Any failure to comply with the terms of the Divestiture Agreement shall constitute a failure to comply with this Order. Any Divestiture Agreement shall be deemed incorporated by

reference into this Order, and any failure by Respondent to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.

- C. Respondent shall include in any Divestiture Agreement related to the Panametrics Ultrasonic NDT Assets the following provisions, and Respondent shall commit that, within ten (10) days of receiving a request from the Commission-approved Acquirer, the Respondent shall:
1. provide assistance and advice to enable the Commission-approved Acquirer to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell Ultrasonic NDT;
 2. provide such personnel, assistance, and training at a facility chosen by the Commission-approved Acquirer to manufacture Ultrasonic NDT, including, but not limited to, technical assistance relating to process technology, quality assurance, and quality control, and shall continue providing such assistance and training until the Commission-approved Acquirer is reasonably satisfied that it can manufacture Ultrasonic NDT in substantially the same manner and quality employed or achieved by or on behalf of Respondent, but no longer than eighteen (18) months following the Closing Date; and
 3. divest any additional, incidental assets of Respondent and make any further arrangements for transitional services to the Commission-approved Acquirer within the first eighteen (18) months after divestiture that may be reasonably necessary to assure the viability and competitiveness of the Panametrics Ultrasonic NDT Assets.

Provided, however, that for the services listed in Paragraph II.C.1-3 of this Order, Respondent shall charge the Commission-approved Acquirer a rate no greater than the Costs incurred by Respondent in rendering such services. Moreover, to the extent Respondent outsources any of the services listed in Paragraph II.C.1-3 of this Order to a third party, Respondent shall charge the Commission-approved Acquirer a rate no greater than the cost incurred by Respondent for the outsourced services, but in no case shall such charge exceed the Costs Respondent would have incurred had Respondent provided such services directly.

Provided further, that Paragraph II.C.1-3 of this Order shall not apply if R/D Tech is the Commission-approved Acquirer, if R/D Tech acquires the Panametrics Ultrasonic NDT Assets pursuant to the R/D Tech Asset Purchase Agreement, and if Respondent does not retain any Panametrics Ultrasonic NDT Employees qualified to provide such assistance and advice.

- D. Respondent shall:
1. for a period of six (6) months from the date Respondent and the Commission-approved Acquirer execute the Divestiture Agreement (“the access period”), provide the Commission-approved Acquirer with the opportunity to enter into employment contracts

with the Panametrics Ultrasonic NDT Employees, provided that such contracts are contingent upon the Commission's approval of the Divestiture Agreement;

2. provide the Commission-approved Acquirer an opportunity to inspect the personnel files and other documentation related to the Panametrics Ultrasonic NDT Employees to the extent permissible under applicable laws and with the consent of the Panametrics Ultrasonic NDT Employees, which consent Respondent shall promptly and in good faith seek to obtain, upon the Commission-approved Acquirer's request, at any time after execution of the Divestiture Agreement until the end of the access period;
3. not, during the access period, interfere with the hiring or employing by the Commission-approved Acquirer of Panametrics Ultrasonic NDT Employees, and shall remove any impediments within the control of Respondent that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondent that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondent shall not make any counteroffer to a Panametrics Ultrasonic NDT Employee who receives a written offer of employment from the Commission-approved Acquirer.

Provided, however, that Paragraph II.D.1-3 of the Order does not prohibit Respondent from making offers of employment to or employing any Panametrics Ultrasonic NDT Employee during the Access Period where the Commission-approved Acquirer has notified Respondent in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

4. provide all Panametrics Ultrasonic NDT Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include, but are not limited to, a continuation of all employee benefits, including regularly scheduled raises and bonuses and a vesting of all pension benefits (as permitted by law), offered by Respondent until the Closing Date.

Provided further, that Paragraph II.D.1-4 of this Order shall not apply after the date the Order becomes final if the Commission-approved Acquirer enters into an employment contract with the Panametrics Ultrasonic NDT Employees of its choice before the Commission accepts the Consent Agreement, Respondent divests the Panametrics Ultrasonic NDT Assets to the Commission-approved Acquirer pursuant to Paragraph II, and Respondent is not required to rescind the transaction with the Commission-approved Acquirer pursuant to Paragraph II.A; and

5. not, for a period of one (1) year following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any employees of the Commission-approved Acquirer having any responsibility related to Ultrasonic NDT to terminate their employment relationship with the Commission-approved Acquirer;

Provided, however, that Respondent may:

- a. advertise for employees in newspapers, trade publications or other media not targeted specifically at Panametrics Ultrasonic NDT Employees, or
 - b. hire employees who apply for employment with Respondent, as long as such employees were not solicited by Respondent in violation of this Paragraph II.D.
- E. For a period of six (6) months from the Closing Date, Respondent shall not manufacture, develop, distribute, market, service or sell Agfa Ultrasonic NDT Products in the United States using the services of any Panametrics Ultrasonic NDT Employees.
- F. Respondent shall transfer to the Commission-approved Acquirer all marketing agreements and all distribution agreements with all Indirect Sales Representatives and Distributors. If R/D Tech is the Commission-approved Acquirer, the Indirect Sales Representatives and Distributors are listed in this Order at Schedule 3.12(a) of non-public Appendix II.
- G. Respondent shall secure, prior to the Closing Date, all consents and waivers from all private entities that are necessary for the divestiture of the Panametrics Ultrasonic NDT Assets to the Commission-approved Acquirer, or for the continued research, development, manufacture, sale, service, marketing or distribution of Ultrasonic NDT by the Commission-approved Acquirer.
- H. Respondent shall not use, directly or indirectly, any Confidential Business Information (other than as necessary to comply with requirements of this Order) related to the research, development, engineering, manufacture, use, distribution, cost, pricing, supply marketing, sale or after-sale servicing of Ultrasonic NDT, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer; *provided, however,* this provision shall not apply to any Confidential Business Information related to Ultrasonic NDT that Respondent can demonstrate to the Commission that Agfa obtained without the assistance of GE prior to the Effective Date, or to Panametrics Shared Intellectual Property, which Respondent shall be permitted to use after the Effective Date only in connection with Non-NDT Products.
- I. Respondent shall to the extent permissible under applicable laws require, as a condition of continued employment post-divestiture, that each employee with access to any Confidential Business Information related to the Panametrics Ultrasonic NDT Assets, including the Panametrics Shared Intellectual Property, sign a confidentiality agreement pursuant to which such employee shall be required to maintain all such Confidential Business Information strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondent (other than as necessary to comply with the requirements of this Order).

Provided, however, that:

- i. Respondent may use such information only to the extent necessary to defend or prosecute claims relating to assets or liabilities that are retained by Respondent after the Effective Date.
 - ii. Paragraph II.I of this Order shall not apply to any Confidential Business Information related to Ultrasonic NDT that Respondent can demonstrate to the Commission that Agfa obtained without the assistance of GE prior to the Effective Date, or to Panametrics Shared Intellectual Property, which Respondent shall be permitted to use after the Effective Date only in connection with Non-NDT Products.
- J. Respondent shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Panametrics Ultrasonic NDT Assets, including Panametrics Shared Intellectual Property, by Respondent's personnel to all of Respondent's employees who (i) were involved in the research, development, manufacturing, sale, service, marketing or distribution of Ultrasonic NDT Products, and/or (ii) may have Confidential Business Information related to the Panametrics Ultrasonic NDT Assets, including Panametrics Shared Intellectual Property. Such notification shall be in substantially the form set forth in the Employee Notification. Respondent shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondent shall provide a copy of such notification to the Commission-approved Acquirer. Respondent shall maintain complete records of all such agreements at Respondent's corporate headquarters and shall provide an officer's certification to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondent shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondent's personnel.
- K. Pending divestiture of the Panametrics Ultrasonic NDT Assets, Respondent shall take such actions as are necessary to maintain the viability and marketability of the Panametrics Ultrasonic NDT Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Panametrics Ultrasonic NDT Assets except for ordinary wear and tear.
- L. Counsel for Respondent (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer only in order to:
 - 1. comply with any Divestiture Agreement, this Order, any law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or

2. defend against, respond to, or otherwise participate in any pending litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or licensing of any other aspect of the Panametrics Ultrasonic NDT Assets or Panametrics Ultrasonic NDT Business;

Provided, however, that Respondent may disclose such information only as necessary for the purposes set forth in Paragraph II of this Order pursuant to an appropriate confidentiality order, agreement or arrangement.

Provided further that:

- a. Respondent shall require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Commission-approved Acquirer; *provided, however,* that Respondent shall not be deemed to have violated Paragraph II.H of this Order if the Commission-approved Acquirer withholds such agreement unreasonably; and
 - b. Respondent shall use its best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.
- M. The purpose of the divestiture of the Panametrics Ultrasonic NDT Assets is to ensure the continued use of the Panametrics Ultrasonic NDT Assets in the same business in which the Panametrics Ultrasonic NDT Assets were engaged from the date the Consent Agreement is signed until the date Respondent divests the Panametrics Ultrasonic NDT Assets to a Commission-approved Acquirer, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission’s Complaint.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint one or more Interim Monitors to assure that Respondent expeditiously complies with all of its obligations and perform all of its responsibilities as required by this Order and the Order to Maintain Assets (“Orders”) and the Divestiture Agreement.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.

- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If one or more Interim Monitors are appointed pursuant to this Paragraph III or pursuant to the relevant provisions of the Order to Maintain Assets in this matter, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.
 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Interim Monitor shall serve until the later of:
 - a. the completion by Respondent of the divestiture of all relevant assets required to be divested pursuant to this Order in a manner that fully satisfies the requirements of the Orders and notification by the Commission-approved Acquirer to the Interim Monitor that it is fully capable of producing the Ultrasonic NDT Product(s) acquired pursuant to a Divestiture Agreement independently of Respondent; or
 - b. the completion by Respondent of the last obligation under the Orders pertaining to the Interim Monitor's service; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
 4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the divestiture of the Panametrics Ultrasonic NDT Assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with the Orders.
 5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission

may set. The Interim Monitor shall have authority to employ, at the expense of the Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

6. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
 7. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondent's obligations under the Orders or the Divestiture Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders.
 8. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require each Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
 - F. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in Paragraph III of this Order or the relevant provisions of the Order to Maintain Assets in this matter.
 - G. The Commission may on its own initiative, or at the request of an Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

- H. An Interim Monitor appointed pursuant to Paragraph III of this Order or the relevant provisions of the Order to Maintain Assets in this matter may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent has not fully complied with the obligations to divest the Panametrics Ultrasonic NDT Assets as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee(s) to divest the Panametrics Ultrasonic NDT Assets in a manner that satisfies the requirements of Paragraph II. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the Panametrics Ultrasonic NDT Assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by the Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph IV, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Panametrics Ultrasonic NDT Assets.

2. The Divestiture Trustee shall have one (1) year after the date the Commission, or a court, approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the 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 Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order;

Provided, however, if the Divestiture 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 Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission;

Provided further, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.

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

monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. In the event that the Divestiture Trustee determines that he or she is unable to divest the Panametrics Ultrasonic NDT Assets in a manner that preserves their marketability, viability and competitiveness and ensures their continued use in the research, development, manufacture, distribution, marketing, promotion, sale, or after-sales support of the Ultrasonic NDT Product(s), the Divestiture Trustee may divest such additional assets of Respondent and effect such arrangements as are necessary to satisfy the requirements of this Order.
 8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 9. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 10. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IV.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

- G. The Divestiture Trustee appointed pursuant to Paragraph IV of this Order may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order or the relevant provisions of the Order to Maintain Assets in this matter.

V.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent has fully complied with Paragraphs II.A through II.J, III, and IV of this Order, Respondent 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 this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondent shall include in its reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.

VI.

IT IS FURTHER ORDERED that Respondent 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.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, Respondent shall permit any duly authorized representative of the Commission:

- A. access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with 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, who may have counsel present, regarding such matters.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

Appendix I
TO THE DECISION AND ORDER

[Redacted From Public Record Version]

**APPENDIX II
TO THE DECISION AND ORDER**

[Redacted From Public Record Version]

**APPENDIX III
TO THE DECISION AND ORDER**

**APPENDIX IV
TO THE DECISION AND ORDER**

[Redacted From Public Record Version]

**APPENDIX V
TO THE DECISION AND ORDER**

[Redacted From Public Record Version]

**APPENDIX VI
TO THE DECISION AND ORDER**

[Redacted From Public Record Version]