

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS:

**Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary**

In the Matter of

Siemens AG,
a corporation;

and

Vodafone Group Plc,
a corporation.

Docket No. C-4011

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Siemens AG of certain voting securities of Atecs Mannesmann AG, a subsidiary of Respondent Vodafone Group Plc, and Respondents 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 Respondents 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

Respondents, their attorneys and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents 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 Respondents 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 has reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, 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 issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent Siemens is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Wittelsbacherplatz 2, D-80333 Munich, Germany. Siemens’s principal subsidiary in the United States is located at 153 East 53rd Street, New York, NY 10022.
2. Respondent Vodafone is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at The Courtyard, 2-4 London Road, Newbury, Berkshire, RG14 IJX, England. Vodafone’s principal subsidiary in the United States is located at 2999 Oak Road, Walnut Creek, CA 94596.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents 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. “Siemens” means Siemens AG, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Siemens AG, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Vodafone” means Vodafone Group plc, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Vodafone Group plc, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Acquisition” means the proposed acquisition of over 50% of the voting securities of Atecs by Siemens pursuant to a Share Purchase Agreement executed by Siemens, Robert Bosch GmbH, Mannesmann AG and Mannesmann Investment GmbH on April 14, 2000, and amended on January 23, 2001.

- D. "AFF" means the advanced flat feeder developed by MDPA and licensed to Rapistan pursuant to an agreement dated January 8, 2001, for the purpose of supplying 362 AFF units to Lockheed Martin Corp. for integration into the FSM 1000 Sorting Machine.
- E. "AFF Services Agreement" means the agreement between Respondents and the MDPA Acquirer described in Paragraph II.E.
- F. "Atecs" means Atecs Mannesmann AG, a corporation organized, existing, and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Mannesmannufer 2, 40213 Duesseldorf, Germany.
- G. "ATHS Intellectual Property" means intellectual property relating to the automated tray handling system that was developed for MDPA's FSM TOP 2000 Sorting Machine by Offenbach pursuant to an agreement dated August 21, 2000, between Offenbach and MDPA.
- H. "ATHS Services Agreement" means the agreement between Respondents and the MDPA Acquirer described in Paragraph II.D.
- I. "Automated Tray Handling System" or "ATHS" means the automated tray handling system developed by Offenbach for MDPA's FSM TOP 2000 Sorting Machine.
- J. "Commission" means the Federal Trade Commission.
- K. "Existing NGFSM Contracts" means the August 14, 1998 contract (No. 102590-98-B-3187) and July 14, 2000 modification to the contract, between the United States Postal Service and Rapistan, to produce and deliver Next Generation Flat Sorting Machines, which are excluded from the definition of MDPA Assets below. Existing NGFSM Contracts does not include any amendments or modifications entered into by the USPS and Vodafone or Siemens after July 14, 2000; provided, however, that the USPS may exercise the options it has under contract No. 102590-98-B-3187 to purchase additional NGFSM units.
- L. "Existing WAND Contract" means the contract between Rapistan and the British Royal Mail dated November 14, 2000, for the development and installation of a worldwide advanced network distribution system.
- M. "FSM 1000 Sorting Machine" means the flat sorting system that MDPA developed and which is operational in USPS facilities. The FSM 1000 Sorting Machine is the predecessor of the NGFSM.
- N. "FSM TOP 2000 Sorting Machine" means the latest generation flat sorting system that

MDPA is developing. MDPA plans to start deploying the FSM TOP 2000 Sorting Machine on the market by the end of the year 2001.

- O. "Key Employees" means all persons identified in Confidential Appendix I of this Order.
- P. "MDPA" means Mannesmann Dematic Postal Automation, a company organized, existing, and doing business under and by virtue of the laws of France, with its office and principal place of business located at 14, Avenue Raspail, 94250 Gentilly, France.
- Q. "MDPA Acquirer" means Northrop or any other Person that acquires the MDPA Assets pursuant to this Order.
- R. "MDPA Assets" means all assets, interests and rights owned or held by Vodafone relating to the operation of the MDPA Business, including, but not limited to:
1. all buildings, plants, manufacturing operations, machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
 2. all rights, titles and interests in and to all owned or leased real property and improvements, together with appurtenances, licenses and permits;
 3. all intellectual property, inventions, technology, trademarks, trade names, brand names, formulations, specifications, contractual rights, patents, trade secrets, copyrights, know-how, research materials, technical information, marketing and distribution information, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, information stored in management information systems (and specifications sufficient for the MDPA Acquirer to use such information), software, designs, drawings, processes, production information, manufacturing information, tooling information, integration information, testing and quality control data;
 4. inventory and storage capacity;
 5. all rights, titles and interests in and to contracts relating to the MDPA Business;
 6. all rights, titles and interests in and to contracts held by Rapistan relating to the MDPA Business, including, but not limited to, contracts relating to the AFF;
 7. all assets owned or held by Offenbach that relate to the development and integration of the Automated Tray Handling System;
 8. all rights under warranties and guarantees, express or implied;
 9. all books, records and files;

10. all items of prepaid expense; and
11. any other assets and rights transferred to the MDPA Acquirer pursuant to the MDPA Divestiture Agreement.

Provided, however, that “MDPA Assets” does not include Existing NGFSM Contracts and Existing WAND Contract.

- S. “MDPA Business” means the research, development, engineering, manufacture, integration, distribution, or sale of any Vodafone product or service to automate the handling and processing of tangible letter mail and flat mail, including large envelopes, catalogs, and magazines, in any area of the world, including, but not limited to, the activities engaged in by Vodafone’s MDPA business unit.
- T. “MDPA Divestiture Agreement” means any agreement to acquire the MDPA Assets entered into by Respondents and any MDPA Acquirer including, but not limited to, the Northrop Purchase Agreement, and any related agreements, schedules, exhibits and appendices.
- U. “Next Generation Flat Sorting Machines” or “NGFSMs” means the latest generation of machines used by United States Postal Service (“USPS”) facilities to sort flat mail that were developed by MDPA and supplied to the USPS under USPS Contract No. 102590-98-B-3187. The term employed by MDPA to refer to NGFSMs is Advanced Flat Mail Sorters Model 100.
- V. “NGFSM Intellectual Property” means the intellectual property developed and owned by MDPA and licensed to Rapistan (under the Patent and Know-How License, Agreement No. 4101003325 between Rapistan and Alcatel Postal Automation Systems) for production of Next Generation Flat Sorting Machines for the USPS.
- W. “Non-Public Vodafone Information” means any information relating to the MDPA Business or MDPA Assets obtained by Respondent Siemens. Non-Public Vodafone Information shall not include information already in the public domain and information that subsequently falls within the public domain through no violation of this Order by Siemens.
- X. “Northrop” means Northrop Grumman Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1840 Century Park East, Los Angeles, CA 90067.
- Y. “Northrop Purchase Agreement” means the agreement dated February 27, 2001, by and between Respondents and Northrop, incorporated by reference into this Order and made a

part hereof as Confidential Appendix II.

- Z. "Offenbach" means Mannesmann Dematic AG, a company organized, existing, and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Ruhrstrasse 28, 58300 Wetter, Germany.
- AA. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- BB. "Rapistan" means Mannesmann Dematic Rapistan Corp., a corporation organized, existing, and doing business under and by virtue of the laws of New York, with its office and principal place of business located at 507 Plymouth Avenue, NE, Grand Rapids, Michigan 49505.
- CC. "Respondents" means Siemens and Vodafone, individually and collectively.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the MDPA Assets, as an on-going business, absolutely and in good faith, to Northrop pursuant to, and in accordance with, the Northrop Purchase Agreement, no later than ten (10) days from the date Respondents consummate the Acquisition; provided, however, that if at the time the Commission determines to make the Order final, the Commission notifies Respondents that Northrop is not approved as the MDPA Acquirer or that the Northrop Purchase Agreement is not an acceptable manner of divestiture, Respondents shall immediately terminate or rescind the Northrop Purchase Agreement and divest the MDPA Assets to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, within three (3) months from the date this Order becomes final; provided further, however, that Siemens may receive (1) a non-exclusive, non-transferable license to use the NGFSM Intellectual Property for the purpose of supplying any machines under the Existing NGFSM Contracts and (2) a non-exclusive, non-transferable license to use the ATHS Intellectual Property for the purpose of completing the ATHS Services Agreement.
- B. Between the date Respondents sign the Consent Agreement and the date the MDPA Assets are completely divested, Respondents shall:
 - 1. Maintain the MDPA Assets in substantially the same condition (except for normal wear and tear) existing at the time Respondents sign the Consent Agreement and take such action that is consistent with the past practices of Respondent Vodafone in connection with the MDPA Assets and is taken in the ordinary course of the normal day-to-day operations of Respondent Vodafone;

2. Use their best efforts to keep available the services of the current officers and employees of the MDPA Business; and maintain the relations and goodwill with suppliers, customers, landlords, creditors, employees, and others having business relationships with the MDPA Business; and
 3. Preserve the MDPA Assets intact as an ongoing business and not take any affirmative action, or fail to take any action within its control, as a result of which the viability, competitiveness, and marketability of the MDPA Assets would be diminished.
- C. For a period of ten (10) years from the date this Order becomes final, Respondent Siemens shall (1) not provide, disclose or otherwise make available any Non-Public Vodafone Information to any Person (including, but not limited to, any of its employees, agents, or representatives, or any third-party), (2) not use any Non-Public Vodafone Information for any reason or purpose, and (3) enforce the terms of this Paragraph II.C. as to any Person and take such action to the extent necessary to cause each such Person to comply with the terms of this Paragraph II.C., including all actions that Respondent Siemens would take to protect its own trade secrets and confidential information; provided, however, that:
1. Respondents (i) may use Non-Public Vodafone Information obtained in the course of providing the services under the ATHS Services Agreement (hereinafter “Confidential ATHS Information”) solely to fulfill Respondents’ obligations under the ATHS Services Agreement, (ii) shall make available Confidential ATHS Information only to those Persons working for Respondents and having a need to know and who agree in writing to maintain the confidentiality of such information, and (iii) shall enforce the terms of this Paragraph II.C.1. as to any Person and take such action to the extent necessary to cause each such Person to comply with the terms of this Paragraph II.C.1., including all actions that Respondents would take to protect their own trade secrets and confidential information.
 2. Respondents (i) may use Non-Public Vodafone Information obtained in the course of performing their obligations under the Existing NGFSM Contracts (hereinafter “Confidential NGFSM Information”) solely to fulfill Respondents’ obligations under the Existing NGFSM Contracts, (ii) shall make available Confidential NGFSM Information only to those Persons working for Respondents and having a need to know and who agree in writing to maintain the confidentiality of such information, and (iii) shall enforce the terms of this Paragraph II.C.2. as to any Person and take such action to the extent necessary to cause each such Person to comply with the terms of this Paragraph II.C.2., including all actions that Respondents would take to protect their own trade secrets and confidential information.
 3. Respondents (i) may use Non-Public Vodafone Information obtained in the course of providing the services under the AFF Services Agreement (hereinafter “Confidential

AFF Information”) solely to fulfill Respondents’ obligations under the AFF Services Agreement, (ii) shall make available Confidential AFF Information only to those Persons working for Respondents and having a need to know and who agree in writing to maintain the confidentiality of such information, and (iii) shall enforce the terms of this Paragraph II.C.3. as to any Person and take such action to the extent necessary to cause each such Person to comply with the terms of this Paragraph II.C.3., including all actions that Respondents would take to protect their own trade secrets and confidential information.

D. For a period up to nine (9) months from the date Respondents divest the MDPA Assets pursuant to Paragraph II.A., Respondents shall provide to the MDPA Acquirer technical and other services for the purpose of developing and producing the ATHS for use with the FSM TOP 2000 Sorting Machine:

1. Respondents shall provide the services required by this Paragraph II.D. on terms agreed to by Respondents and the MDPA Acquirer (hereinafter “ATHS Services Agreement”) and made part of the MDPA Divestiture Agreement.
2. Respondents shall provide the services required by this Paragraph II.D. in a manner that substantially maintains the type and level of service provided by Offenbach pursuant to the Automated Tray Handling System Agreement between Offenbach and MDPA, dated August 21, 2000.
3. At the request of the MDPA Acquirer, Respondents shall provide to the MDPA Acquirer technical assistance and training, including access to Respondent Siemens’s production facilities, sufficient to enable the MDPA Acquirer to manufacture the ATHS and integrate it into the FSM TOP 2000 Sorting Machine, such assistance and training to be completed no later than thirty (30) days after the date of the MDPA Acquirer’s request.
4. Respondents shall transfer to the MDPA Acquirer all rights, title and interest in all intellectual property (including, but not limited to, all technical data, technical data package, and all other technical information) relating to the ATHS developed by Respondents after the date Respondents divest the MDPA Assets, at the time such intellectual property is developed.
5. At the request of the MDPA Acquirer, Respondents shall transfer to the MDPA Acquirer all rights, title and interest in all tooling relating to the ATHS developed or acquired by Respondents after the date Respondents divest the MDPA Assets, no later than twenty (20) days after the request of the MDPA Acquirer, and in any event no later than the date the ATHS Services Agreement terminates.
6. Respondents shall not terminate the ATHS Services Agreement for any reason;

provided, however, that Respondents may terminate the ATHS Services Agreement for an alleged material breach by the MDPA Acquirer, but only if Respondents have (i) provided the MDPA Acquirer with thirty (30) days' notice to cure the breach and (ii) submitted their claim to arbitration and the arbitrator has fully resolved the claim in Respondents' favor.

- E. From the date Respondents divest the MDPA Assets pursuant to Paragraph II.A. of this Order until the MDPA Acquirer successfully manufactures and installs the first AFF unit, Respondents shall provide to the MDPA Acquirer technical and other services for the purpose of producing and installing the AFF:
1. Respondents shall provide the services required by this Paragraph II.E. on terms agreed to by Respondents and the MDPA Acquirer (hereinafter "AFF Services Agreement") and made part of the MDPA Divestiture Agreement.
 2. Respondents shall provide the services required by this Paragraph II.E. in a manner that enables the MDPA Acquirer to substantially maintain the type and level of service provided by Rapistan under its contract with Lockheed Martin Corp., dated February 7, 2001.
 3. At the request of the MDPA Acquirer, Respondents shall provide to the MDPA Acquirer technical assistance, including access to Respondent Siemens's engineering personnel and production facilities, sufficient to enable the MDPA Acquirer to manufacture the AFF and install it into the FSM 1000 Sorting Machine, such assistance to be completed no later than ten (10) days after the date of the MDPA Acquirer's request.
 4. Respondents shall not terminate the AFF Services Agreement for any reason; provided, however, that Respondents may terminate the AFF Services Agreement for an alleged material breach by the MDPA Acquirer, but only if Respondents have (i) provided the MDPA Acquirer with thirty (30) days' notice to cure the breach and (ii) submitted their claim to arbitration and the arbitrator has fully resolved the claim in Respondents' favor.
- F. The MDPA Divestiture Agreement shall be incorporated into this Order and made a part hereof, and shall not be construed to vary or contradict the terms of this Order. Any failure to comply with the terms of the MDPA Divestiture Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the MDPA Divestiture Agreement, any modification of the MDPA Divestiture Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.
- G. The purpose of the divestiture of the MDPA Assets is to ensure the continued use of the MDPA Assets in the same business in which such assets are engaged at the time of the

announcement of the Acquisition by Respondents 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 the time of the execution of the MDPA Divestiture Agreement, Respondents shall provide the MDPA Acquirer with a complete list of all non-clerical, salaried employees and agents of Vodafone who are involved, or have been involved, in the MDPA Business at any time during the period from April 14, 2000, until the date of the divestiture. The list shall state each individual's name, position or positions held from April 14, 2000, until the date of the divestiture, address, telephone number, and a description of the duties and work performed by the individual in connection with the MDPA Business. Respondents shall provide the MDPA Acquirer the opportunity to enter into employment contracts with such individuals, provided that such contracts are contingent upon the Commission's approval of the divestiture.
- B. Respondents shall provide the MDPA Acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified pursuant to Paragraph III.A. of this Order to the extent permissible under applicable laws, at the request of the MDPA Acquirer any time after the execution of the MDPA Divestiture Agreement between the MDPA Acquirer and Respondents.
- C. Respondents shall not enforce any confidentiality or non-compete restrictions relating to the MDPA Assets that apply to any employee identified pursuant to Paragraph III.A. who accepts employment with the MDPA Acquirer that would interfere with the MDPA Acquirer's ability to interview or hire any employee identified pursuant to Paragraph III.A.
- D. Respondents shall provide all employees identified pursuant to Paragraph III.A. with financial incentives to continue in their positions until the date the divestiture is accomplished. Such incentives shall include a continuation of all employee benefits offered by Vodafone until the date the divestiture of the MDPA Assets is accomplished, including regularly scheduled raises and bonuses, and a vesting of all pension benefits (as permitted by law). In addition, in the event the MDPA Acquirer is a person other than Northrop, Siemens shall provide incentives to all Key Employees to accept employment with the MDPA Acquirer at the time of the divestiture. Such incentives shall include a bonus for each Key Employee, equal to 10% of the employee's current annual salary and commissions (including any annual bonuses) as of the date this Order is accepted by the Commission for public comment, who accepts an offer of employment from the MDPA Acquirer within three (3) months of the date the divestiture is accomplished and remains

employed by the MDPA Acquirer for a period of one (1) year, payable by Siemens one (1) year after the commencement of the employee's employment by the MDPA Acquirer.

- E. For a period of one (1) year following the date the divestiture is accomplished, Respondents shall not, directly or indirectly, solicit or otherwise attempt to induce any employees or agents to terminate their employment relationship with the MDPA Acquirer; provided, however, it shall not be deemed to be a violation of this provision if (1) Respondents advertise for employment opportunities in newspapers, trade publications or other media not targeted specifically at the employees, or (2) Respondents hire employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph III.E.; provided further, however, that during the four (4) month period following the date the divestiture is accomplished, Respondents shall not, directly or indirectly, hire or enter into any arrangement for the services of any employees or agents employed by the MDPA Acquirer or any Persons identified in Paragraph III.A.
- F. Respondents shall not transfer, without the consent of the MDPA Acquirer, any of the individuals identified in Paragraph III.A. of this Order to any other position until the divestiture to the MDPA Acquirer is accomplished.
- G. For the period beginning on the date the MDPA Divestiture Agreement is signed by Respondents and ending two (2) years following the divestiture required by Paragraph II. of this Order ("Extended Restricted Period"), Respondents shall not solicit, induce or attempt to induce any MDPA Business customer to terminate or modify any contract with the MDPA Business; provided, however, that nothing in this Paragraph III.G. shall prevent Respondents from responding to an unsolicited invitation to bid on a contract from any customer during the Extended Restricted Period.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested the MDPA Assets, absolutely and in good faith, within the time and in the manner required by Paragraph II.A. of this Order, the Commission may appoint at any time a trustee to divest such assets.
- B. In the event that the Commission brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents 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 shall preclude the Commission 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 Respondents to comply with this Order.

C. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV. of this Order, Respondents 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 Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of notice from the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents 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 MDPA Assets.
3. Within ten (10) days after appointment of the trustee, Respondents shall 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 required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph IV.C.3. to accomplish the divestiture, 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 the period for no more than two (2) additional periods.
5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the MDPA Assets or to any other relevant information as the trustee may request. Respondents shall develop such financial or other information as the trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents 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 Respondents' absolute and unconditional obligation to divest expeditiously at no

minimum price. The divestiture shall be made in a manner that receives the prior approval of the Commission and to an Acquirer that receives the prior approval of the Commission; provided, however, if the trustee receives bona fide offers for the MDPA Assets from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such assets to the acquiring entity selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, 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 Respondents, 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 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 Respondents, 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 MDPA Assets.
8. Respondents 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 claims 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 required by this Order.
11. In the event that the trustee determines that he or she is unable to divest the MDPA Assets in a manner consistent with the Commission's purpose as described in Paragraph II.G. of this Order, the trustee may divest such additional assets related to the MDPA Assets of Respondents as necessary to achieve the remedial purposes of this Order.

12. The trustee shall have no obligation or authority to operate or maintain the MDPA Assets.
13. The trustee shall report in writing to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter for a period of nine (9) months, and annually thereafter on the anniversary of the date this Order becomes final until Respondents have fully complied with this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. through IV. of this Order. Respondents shall include in their 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. through IV. of the Order, including a description of all substantive contacts or negotiations relating to the divestiture and approval, and the identities of all parties contacted. Respondents shall include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval. The final compliance report required by this Paragraph V. shall include a statement that the divestiture has been accomplished in the manner approved by the Commission and shall include the date the divestiture was accomplished.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondents 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 this 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 to Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matter contained in this Order; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate with respect to Respondent Vodafone when the Acquisition has been completed.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: May 15, 2001

CONFIDENTIAL APPENDIX I

CONFIDENTIAL APPENDIX II