

Complaint

IN THE MATTER OF

METSO OYJ AND SVEDALA INDUSTRI ABCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-4024; File No. 0010186**Complaint, September 7, 2001--Decision, October 19, 2001*

This consent order addresses the acquisition by Respondent Metso Oyj (“Metso”) – a Finnish corporation and one of the world’s largest suppliers of rock processing equipment such as cone crushers, jaw crushers, primary gyratory crushers, and grinding mills – of Respondent Svedala Industri AB (“Svedala”), a Swedish corporation that is another large supplier of such equipment. The order, among other things, requires the respondents to divest the Metso worldwide primary gyratory crusher business to Sandvik AB – a publicly-traded Swedish corporation, and a leading global supplier of drilling and excavation machinery, equipment and tools for mining and construction industries – and to divest their grinding mill businesses to Outokumpu Oyj (“Outokumpu”), a diversified Finnish metals corporation. The order also requires the respondents to divest Svedala’s worldwide cone crusher and jaw crusher businesses to Sandvik. In addition, the order prohibits the respondents, for one year, from soliciting or inducing any employees or agents of the rock processing equipment businesses involved in the divestitures to terminate their employment with Sandvik or Outokumpu. The order also requires the respondents, for one year, to provide technical assistance and training at cost to Sandvik and Outokumpu.

Participants

For the Commission: *Matthew J. Reilly, Joanne C. Lewers, Randall A. Long, Eric D. Dowell, Katherine F. Seifert, Ann Malester, David A. von Nirschl, Roberta S. Baruch, Jeffrey Fischer, Roger Boner, Daniel O’Brien, and David Scheffman.*

For the Respondents: *M. Elaine Johnston, Martin M. Toto, and Tara A. Hunt, White & Case, Robert S. Schlossberg, Christine A. Laciak, and Robert B. Wiggins, Morgan, Lewis & Bockius.*

Complaint

COMPLAINT

The Federal Trade Commission (“Commission”), having reason to believe that Respondents Metso Oyj (“Metso”), a corporation subject to the jurisdiction of the Commission, and Svedala Industri AB (“Svedala”), a corporation subject to the jurisdiction of the Commission, have entered into an agreement whereby Metso would acquire all of the issued and outstanding securities and convertible debentures of Svedala in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Metso is a corporation organized, existing and doing business under and by virtue of the laws of Finland, with its office and principal place of business located at Fabianinkatu 9 A, P.O. Box 1220, FIN-00101, Helsinki, Finland. Metso’s principal subsidiary in the United States is located at 133 Federal Street, Suite 302, Boston, MA 02110.
2. Respondent Svedala is a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its office and principal place of business located at Kaptensgatan 1, Box 4004, SE-203, 11 Malmö, Sweden. Svedala’s principal subsidiary in the United States is located at 20965 Crossroads Circle, Waukesha, WI 53186.
3. Respondent Metso, through its Metso Minerals subsidiary (formerly known as Nordberg), and Respondent Svedala are engaged in, among other things, the research, development, manufacture and sale of rock and mineral processing equipment, including but not limited to cone crushers, jaw crushers, primary gyratory crushers and grinding mills.

Complaint

4. Respondents are, and at all times herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and are corporations whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

5. On June 21, 2000, Metso announced a cash tender offer to acquire all of the issued and outstanding shares and convertible debentures of Svedala (“Acquisition”). The transaction is valued at approximately \$1.6 billion.

III. THE RELEVANT MARKETS

6. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:
 - a. the research, development, manufacture and sale of cone crushers;
 - b. the research, development, manufacture and sale of jaw crushers;
 - c. the research, development, manufacture and sale of primary gyratory crushers; and
 - d. the research, development, manufacture and sale of grinding mills.
7. For the purposes of this Complaint, the world is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

Complaint

IV. THE STRUCTURE OF THE MARKETS

8. The market for the research, development, manufacture and sale of cone crushers is highly concentrated whether measured by the Herfindahl-Hirschman Index (“HHI”) or by concentration ratios. Metso and Svedala are the two leading suppliers of cone crushers in the world.
9. The market for the research, development, manufacture and sale of jaw crushers is highly concentrated whether measured by the HHI or by concentration ratios. Metso and Svedala are the two leading suppliers of jaw crushers in the world.
10. The market for the research, development, manufacture and sale of primary gyratory crushers is highly concentrated whether measured by the HHI or by concentration ratios. Metso and Svedala are two of the leading suppliers of primary gyratory crushers in the world.
11. The market for the research, development, manufacture and sale of grinding mills is highly concentrated whether measured by the HHI or by concentration ratios. Metso and Svedala are two of the leading suppliers of grinding mills in the world.
12. Metso and Svedala are actual competitors in each of the relevant markets for the research, development, manufacture and sale of cone crushers, jaw crushers, primary gyratory crushers and grinding mills.

V. ENTRY CONDITIONS

13. Entry into each of the relevant markets identified in Paragraphs 6 and 7 is unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 14, because of, among other things, the time and expense necessary to

Complaint

develop new rock processing equipment and gain customer acceptance for the equipment.

VI. EFFECTS OF THE ACQUISITION

14. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating actual, direct, and substantial competition between Metso and Svedala in each of the relevant markets;
 - b. by increasing the likelihood that Metso will unilaterally exercise market power in each of the relevant markets;
 - c. by increasing the likelihood of coordinated interaction in each of the relevant markets; and
 - d. by increasing the likelihood that customers of cone crushers, jaw crushers, primary gyratory crushers and grinding mills would be forced to pay higher prices.

VII. VIOLATIONS CHARGED

15. The cash tender offer described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
16. The Acquisition described in Paragraph 5, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

Complaint

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventh day of September, 2001, issues its Complaint against said Respondents.

By the Commission, Chairman Muris not participating.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition of Respondent Svedala Industri AB (“Svedala”) by Respondent Metso Oyj (“Metso”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge 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 Orders (“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 had reason to believe that Respondents have 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, 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”):

Decision and Order

1. Respondent Metso is a corporation organized, existing and doing business under and by virtue of the laws of Finland, with its office and principal place of business located at Fabianinkatu 9 A, P.O. Box 1220, FIN-00101, Helsinki, Finland. Metso's principal subsidiary in the United States is located at 133 Federal Street, Suite 302, Boston, MA 02110.

2. Respondent Svedala is a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its office and principal place of business located at Kaptensgatan 1, Box 4004, SE-203 11, Malmö, Sweden. Svedala's principal subsidiary in the United States is located at 20965 Crossroads Circle, Waukesha, WI 53186.

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. "Metso" means Metso Oyj, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Metso Oyj (including, but not limited to, Metso Minerals f/k/a Nordberg), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Svedala" means Svedala Industri AB, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Svedala Industri AB, and the respective directors, officers,

Decision and Order

employees, agents, representatives, successors, and assigns of each.

- C. "Respondents" means Metso and Svedala, individually and collectively.
- D. "Acquisition" means Respondent Metso's proposed acquisition of the common stock and convertible debentures of Respondent Svedala in accordance with the terms and conditions of the recommended public takeover offer announced on 21 June 2000 (offer document dated 7 July 2000).
- E. "Commission" means the Federal Trade Commission.
- F. "Sandvik" means Sandvik AB (publ), Reg. No. 556000-3468, a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its offices and principal place of business located at SE-81181 Sandviken, Sweden.
- G. "Outokumpu" means Outokumpu Mintec Oy, Reg. No. 764.823, a corporation organized, existing and doing business under and by virtue of the laws of Finland, with its offices and principal place of business located at Riihitontuntie 7 B, PO Box 140, FIN-02201 Espoo, Finland.
- H. "Acquirer" means any person or business that purchases the Cone Crusher Business, the Grinding Mill Business, the Jaw Crusher Business or the Primary Gyratory Crusher Business pursuant to this Order. Acquirer includes Sandvik and/or Outokumpu.
- I. "Agency" means any governmental regulatory authority in the world responsible for granting approvals, clearances, qualifications, licenses or permits for any aspect of the research, design, development, engineering, manufacturing,

Decision and Order

constructing, marketing, distribution, sale, or after-sales support of a Product.

- J. "Autogenous Mill" means a Grinding Mill utilizing a horizontal tube design that breaks rocks down into smaller particles strictly by inducing frequent, high energy impacts between the rocks themselves.
- K. "Ball Mill" means a Grinding Mill utilizing a horizontal tube design that employs a tumbling charge of steel balls to break rocks down into smaller particles as the mill rotates.
- L. "Business Day" means any day excluding Saturday, Sunday and any other United States Federal holiday.
- M. "Classic Products" means the following discontinued and non-U.S. models of Cone Crushers: Hydrocone 30", Hydrocone 36", Superior 36", Hydrocone 45", Superior 45", Hydrocone 51", Superior 50", Hydrocone 60", Hydrocone 84", Hydrocone 200, Hydrocone 300, Hydrocone 400, Hydrocone 500, Hydrocone 600, Hydrocone 700, Loro Prisini Neytrec Cone Crushers, Rollercones, Dracar Cones, BS Cones, Gyrasphere 24FC-24S-245, Gyrasphere 36S-367-36X10, Gyrasphere 48fc-48s-489-48X13, Gyrasand 24GS-36GS-48GS, 90RB, 120RB, 50T and 60T; and the following discontinued and non-U.S. models of Jaw Crushers: R 2513, TRF 3521, R 5026 = 50 F, TRF 6026, R 6030 = TRF 6030 & 60 F, R 6040 = 60 G-96, R 7550 = 75G-120, RG 8013 = TRF 8013 R, TRG 9060, TRG 9075, R 9075 = 90G-160, R 9090, RG 10015 = TRF 10015, RG 12030 = TRF 12030, R 10580, R 105100, R 120100, R 150120, R 210170, FS 4025, FS 5032, FS 6540, P 7055, P 7550, FS 9060, P 10080, P 100100, P 12090 = FS 12090, P 120100-210, P 120100-240, P 150130, P 180140, A-1 48x60, A-1 60x84, Universal 1536, Universal 1830, Universal 2036, Universal 3042, Universal 3242, Universal 3254, Universal 3648, Universal 4248, Universal 4250, Universal 5060, 8013, 9026, 12040, 2015, 3020, 4230,

Decision and Order

6240, 8050, 10060, 10080, 12090, 150120, RT 6090, RT 75105, RT 60120, RT 80120, RT 105120, Cfbk, Altairac, and Dragon & Babbittless.

- N. “Closing Date” means the date on which Respondents and a Commission-approved Acquirer close on a transaction to divest or transfer relevant assets pursuant to this Order.
- O. “Commission-approved Acquirer” means an entity approved by the Commission to acquire particular assets the Respondents are required to divest or transfer pursuant to this Order.
- P. “Cone Crusher” means a fixed or mobile machine, other than a Primary Gyratory Crusher, used to crush rocks in mines, quarries and certain other applications, that achieves crushing by using two cones (one placed inside the other) which crush rock fed into the space between the two cones by elliptical rotation of the inner cone in a manner that causes the gap between the mobile cone and the fixed cone to open and close.
- Q. “Cone Crusher Assets” means all of Respondent Svedala’s rights, title and interest, worldwide, in and to all assets relating to the Cone Crusher Business, including, without limitation, the following:
1. all rights, title, and interest in and to Product Intellectual Property relating to the research, design, development, engineering, manufacture, construction, distribution, marketing, sale, or after-sales support of Cone Crushers worldwide;
 2. all rights, title, and interest in all equipment, machinery, tools, furniture, and other tangible property listed in Schedules 1 b), 1 j), 1 k) and 2.3 of the Sandvik Share Purchase Agreement;

Decision and Order

3. all rights, title, and interest in and to Patents relating to the research, design, development, engineering, manufacture, construction, distribution, marketing, sale or after-sales support of Cone Crushers worldwide, including, but not limited to, those Patents listed in Schedules 1 l) and 2.3 of the Sandvik Share Purchase Agreement;
4. all rights, title, and interest in and to inventories of products, raw materials (to the extent requested by the Commission-approved Acquirer), supplies and parts, including work-in-process and finished goods, relating to the research, design, development, engineering, manufacturing, construction, marketing, sale, or after-sales support of Cone Crushers worldwide, listed and described in Schedules 1 b), 1 j), 1 k) and 2.3 of the Sandvik Share Purchase Agreement;
5. all rights, title, and interest in and to agreements, express or implied, relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Cone Crushers worldwide, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;
6. all Product Marketing Materials;
7. all unfilled customer orders for finished Cone Crushers as of the Closing Date (a list of such orders to be provided to the Commission-approved Acquirer within five Business Days after the Closing Date);

Decision and Order

8. all books, records and files that relate to Product Manufacturing Technology, Product manufacturing, and Product manufacturing processes; and
9. all inventories on hand as of the Closing Date.

PROVIDED, HOWEVER, that the definition of Cone Crusher Assets does not include:

- (i) Consignment Stock; and
 - (ii) Any inventory, drawing, pattern, computer software or program solely related to the Classic Products and previously used by Respondent Svedala.
- R. "Cone Crusher Business" means Respondent Svedala's business of researching, designing, developing, engineering, manufacturing, constructing, distributing, marketing, selling, and providing after-sales support for Cone Crushers, including, but not limited to, the following model designations: Hydrocone H-22", Hydrocone S-2000, Hydrocone S-3000, Hydrocone S-4000, Hydrocone S-6000, Hydrocone H-2000, Hydrocone H-3000, Hydrocone H-4000, Hydrocone H-6000, Hydrocone H-8000, Eurocone 942, Eurocone 1152, Eurocone 1362, Eurocone 1572, as well as mobile versions of these models where the crusher is installed on wheel- or track-mounted chassis, Crawlmaster S3000, Crawlmaster S4000, Scorpion 2000, Scorpion 4000, Scorpion 3000, Roadmaster 3000 and Roadmaster 4000.
- S. "Cone Crusher Employees" means all of those individuals employed by Respondent Svedala with responsibility for the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales or after-sales support of Cone Crushers, who directly participated (irrespective of the portion of working time involved) in the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales or after-sales

Decision and Order

support of Cone Crushers worldwide within the eighteen (18) month period immediately prior to the Closing Date.

- T. “Confidential Business Information” means all information owned by Respondents that is not in the public domain relating to the research, design, development, engineering, manufacturing, construction, marketing, commercialization, distribution, cost, pricing, supply, sales, after-sales support, or use of any of Respondents’ Products or Respondents’ Products in development.
- U. “Consignment Stock” means finished Products, including spare parts and wear parts, and second-hand equipment owned by Respondent Svedala’s distribution organization or Respondent Metso and does not include the inventory of work in process, raw materials and components owned by Svedala-Arbrå Aktiebolag, Svedala Mobile Equipment AB, or Svedala SA.
- V. “Contract Manufacture” means the manufacture of a Product supplied pursuant to a Divestiture Agreement by Respondents for sale to a Commission-approved Acquirer.
- W. “Divestiture Agreement” means each of the following agreements individually: the Outokumpu Asset Purchase Agreement, the Sandvik Share Purchase Agreement, and the Jaw Crusher Supply Agreement; or any agreement signed by the Respondents and approved by the Commission to accomplish the requirements of this Order.
- X. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph V.A. of the Decision and Order in this matter.
- Y. “Grinding Mill” means a cylindrical machine used to grind rock to a powder or liquid slurry in mines, industrial mineral processes and certain other applications by inducing

Decision and Order

movement and motion to the rocks contained within the mill body, which causes them to impact one another or to have impact with some form of grinding media (steel balls, steel rods, or ceramic balls) and, through repetition, causes the rocks to break apart and gradually wear down to small particles.

Z. “Grinding Mill Assets” means all of Respondent Metso’s rights, title and interest, worldwide, in and to all assets relating to the Grinding Mill Business, including without limitation, the following:

1. all rights, title, and interest in and to Product Intellectual Property relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Grinding Mills worldwide;
2. all rights, title, and interest in all equipment, machinery, tools, furniture, and other tangible property listed in Schedules 1.2 and 7.9 of the Outokumpu Asset Purchase Agreement;
3. all rights, title, and interest in and to Patents relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale, or after-sales support of Grinding Mills worldwide, including, but not limited to, those Patents listed in Schedule 7.14 of the Outokumpu Asset Purchase Agreement;
4. all rights, title, and interest in and to inventories of products, raw materials (to the extent requested by the Commission-approved Acquirer), supplies and parts, including work-in-process and finished goods, relating to the research, design, manufacturing, construction, development, engineering, marketing, sale or after-sales support of Grinding Mills worldwide, listed and

Decision and Order

described in Schedule 1.2 of the Outokumpu Asset Purchase Agreement;

5. all rights, title, and interest in and to agreements, express or implied, relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Grinding Mills worldwide, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;
6. all Product Marketing Materials;
7. all unfilled customer orders for finished Grinding Mills as of the Closing Date (a list of such orders to be provided to the Commission-approved Acquirer within five Business Days after the Closing Date);
8. at the Acquirer's option, and with the concurrence of the Commission, a contract pursuant to which Respondents will provide to the Acquirer certain services related to Grinding Mills, including administrative services, as provided in Section 5.6 of the Outokumpu Asset Purchase Agreement;
9. all books, records and files that relate to Product Manufacturing Technology, Product manufacturing, and Product manufacturing processes; and
10. all inventories on hand as of the Closing Date.

PROVIDED, HOWEVER, that the definition of Grinding Mill Assets does not include:

Decision and Order

- (i) one pilot scale grinding mill located in Milwaukee, Wisconsin;
 - (ii) a license agreement, dated January 1, 1982, between Nordberg Technology NV, Nordberg Inc., Nordberg Licensing BV and Nordberg Manufacturing Company (SA) (Proprietary) Limited, including all amendments thereto;
 - (iii) rights relating to an outstanding dispute with Ashanti Goldfields in Tanzania;
 - (iv) any rights, titles and interests in or to owned or leased real property, buildings, office equipment or furniture at Metso's offices in Milwaukee, Wisconsin; Perth, Australia; or Johannesburg, South Africa;
 - (v) real property and improvements, office space and personal property related solely to Respondent Metso's sales and distribution organization; and
 - (vi) the project contracts listed on Schedule A hereto.
- AA. "Grinding Mill Business" means Respondent Metso's business of researching, designing, developing, engineering, manufacturing, constructing, distributing, marketing, selling and providing after-sales support for, Grinding Mills including, but not limited to, Autogenous Mills, Semi-Autogenous Mills, Rod Mills, Ball Mills, and Pebble Mills.
- BB. "Grinding Mill Employees" means all of those individuals employed by Respondent Metso with responsibility for the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales or after-sales support of Grinding Mills, who directly participated (irrespective of the portion of

Decision and Order

working time involved) in the research, design, development, engineering, manufacturing, constructing, marketing, sales or after-sales support of Grinding Mills worldwide within the eighteen (18) month period immediately prior to the Closing Date.

- CC. “Intellectual Property” means all: (1) Patents; (2) mask works and copyrights in works of authorship of any type, including, but not limited to, computer software and industrial designs, registrations and applications for registration thereof; (3) Product Trademarks, including the goodwill of the business symbolized thereby and associated therewith, as well as registrations and applications for registration thereof; (4) trade secrets, know-how and other confidential or proprietary technical, business, research, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof; (5) rights to obtain and file for Patents and registrations thereof; and (6) rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach thereof.
- DD. “Interim Monitor” means the Interim Monitor appointed by the Commission pursuant to Paragraph III.A. of the Order to Maintain Assets and/or Paragraph IV. A. of the Decision and Order in this matter.
- EE. “Jaw Crusher” means a fixed or mobile machine used in mines, quarries and certain other applications, that crushes rocks by trapping them in between a fixed steel plate and a pivoting, oscillating steel plate, which moves backwards and forwards, being operated by a revolving flywheel mounted on an eccentric shaft.
- FF. “Jaw Crusher Assets” means all of Respondent Svedala’s rights, title and interest, worldwide, in and to all assets

Decision and Order

relating to the Jaw Crusher Business, including without limitation, the following:

1. all rights, title, and interest in and to Product Intellectual Property relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Jaw Crushers worldwide;
2. all rights, title, and interest in all equipment, machinery, tools, furniture, and other tangible property listed in Schedules 1 b), 1 j), 1 k) and 2.3 of the Sandvik Share Purchase Agreement;
3. all rights, title, and interest in and to Patents relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale, or after-sales support of Jaw Crushers worldwide, including, but not limited to, those Patents listed in Schedules 1 l) and 2.3 of the Sandvik Share Purchase Agreement;
4. all rights, title, and interest in and to inventories of products, raw materials (to the extent requested by the Commission-approved Acquirer), supplies and parts, including work-in-process and finished goods, relating to the research, design, manufacturing, construction, development, engineering, marketing, sale, or after-sales support of Jaw Crushers worldwide, listed and described in Schedules 1 b), 1 j), 1 k) and 2.3 of the Sandvik Share Purchase Agreement;
5. all rights, title, and interest in and to agreements, express or implied, relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Jaw Crushers worldwide, regardless of whether such agreements relate exclusively to such

Decision and Order

purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;

6. all Product Marketing Materials;
7. at the Acquirer's option, and with the concurrence of the Commission, a contract pursuant to which Respondents will Contract Manufacture Jaw Crushers, in accordance with the Jaw Crusher Supply Agreement;
8. all unfilled customer orders for finished Jaw Crushers as of the Closing Date (a list of such orders to be provided to the Commission-approved Acquirer within five Business Days after the Closing Date);
9. all books, records and files that relate to Product Manufacturing Technology, Product manufacturing, and Product manufacturing processes; and
10. all inventories on hand as of the Closing Date.

PROVIDED, HOWEVER, that the definition of Jaw Crusher Assets does not include:

- (i) any rights, titles and interests in or to owned or leased real property or buildings at Svedala's foundry and manufacturing facility in Faco, Brazil;
- (ii) Consignment Stock; and
- (iii) any inventory, drawing, pattern, computer software or program solely related to the Classic Products and previously used by Respondent Svedala.

- GG. “Jaw Crusher Business” means Respondent Svedala’s business of researching, designing, developing, engineering, manufacturing, constructing, distributing, marketing, selling, and providing after-sales support for, Jaw Crushers, including, but not limited to, the following model designations: Jawmaster 806, Jawmaster 907, Jawmaster 1108, Jawmaster 1206, Jawmaster 1208, Jawmaster 1211, Jawmaster 1312, Jawmaster 1511, Jawmaster 1513, as well as mobile versions of these models where the crusher is installed on wheel- or track-mounted chassis, Crawlmaster 907, Crawlmaster 1108, Crawlmaster 1206, Crawlmaster 1208, Crawlmaster 1208F, and Crawlmaster 1211F.
- HH. “Jaw Crusher Employees” means all of those individuals employed by Respondent Svedala with responsibility for the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales or after-sales support of Jaw Crushers, who directly participated (irrespective of the portion of working time involved) in the research, design, development, engineering, manufacturing, constructing, marketing, sales or after-sales support of Jaw Crushers worldwide within the eighteen (18) month period immediately prior to the Closing Date.
- II. “Jaw Crusher Supply Agreement” means the *Framework Sub-Contracting Agreement*, as amended, attached as Schedule 15 to the Sandvik Share Purchase Agreement, and any modifications and amendments thereto that have been approved by the Commission, which is contained in non-public Appendix I attached to this Order.
- JJ. “Manufacturing Technology” means all technology, trade secrets, know-how, and proprietary information relating to the manufacture, assembly, or construction of the Product.

Decision and Order

- KK. “Outokumpu Asset Purchase Agreement” means the *Asset Purchase Agreement* by and between Metso Corporation and Outokumpu Mintec OY dated June 7, 2001, as amended, which is contained in non-public Appendix II attached to this Order.
- LL. “Patents” mean all patents, patents pending, patent applications and statutory invention registrations, including 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 any Product of or owned by Respondents as of the Closing Date.
- MM. “Pebble Mill” means a Grinding Mill that either: (a) utilizes a horizontal tube design where the inside of the cylinder is lined with ceramic bricks and employs ceramic balls to break the rocks down into smaller particles to produce a very pure, finely ground product; or (b) operates as the second stage to an Autogenous Mill and uses rocks from the Autogenous Mill discharge as its grinding media.
- NN. “Primary Gyratory Crusher” means a machine used as a primary crusher of rocks in mines, quarries, and certain other applications, that achieves crushing by using two cones (one placed inside the other) in which the interior mobile cone is inverted relative to the fixed outside cone to allow very large rocks to enter the crusher and which crushes rocks fed into the space between the gap in the two cones by movement of the interior cone in an eccentric manner inside the fixed cone with the result that the gap between the two cones opens and closes.

Decision and Order

OO. “Primary Gyratory Crusher Assets” means all of Respondent Metso’s rights, title and interest, worldwide, in and to all assets relating to the Primary Gyratory Crusher Business, including without limitation, the following:

1. all rights, title, and interest in and to Product Intellectual Property relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale, or after-sales support of Primary Gyratory Crushers worldwide;
2. all rights, title, and interest in all equipment, machinery, tools, furniture, and other tangible property listed in Schedule 1 f) of the Sandvik Share Purchase Agreement;
3. all rights, title, and interest in and to Patents relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Primary Gyratory Crushers worldwide, including, but not limited to, those Patents listed in Schedule 1 l) of the Sandvik Share Purchase Agreement;
4. all rights, title, and interest in and to inventories of products, raw materials (to the extent requested by the Commission-approved Acquirer), supplies and parts, including work-in-process and finished goods, relating to the research, design, manufacturing, construction, development, engineering, marketing, sale or after-sales support of Primary Gyratory Crushers worldwide, listed and described in Schedule 1 f) of the Sandvik Share Purchase Agreement;

Decision and Order

5. all rights, title, and interest in and to agreements, express or implied, relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Primary Gyratory Crushers worldwide, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;
6. all Product Marketing Materials;
7. all unfilled customer orders for finished Primary Gyratory Crushers as of the Closing Date (a list of such orders to be provided to the Commission-approved Acquirer within five Business Days after the Closing Date);
8. all books, records and files that relate to Product Manufacturing Technology, Product manufacturing, and Product manufacturing processes; and
9. all inventories on hand as of the Closing Date.

PROVIDED, HOWEVER, that the definition of Primary Gyratory Crusher Assets does not include:

- (i) any rights, titles and interests in or to owned or leased real property, buildings, office equipment or furniture at Metso's offices in Milwaukee, Wisconsin and Smedjebacken, Sweden;
- (ii) Consignment Stock;
- (iii) a license agreement, dated January 1, 1982, between Nordberg Technology NV, Nordberg Inc., Nordberg

Decision and Order

Licensing BV and Nordberg Manufacturing Company (SA) (Proprietary) Limited, including all amendments thereto; and

- (iv) real property and improvements, office space and personal property related solely to Respondent Metso's sales and distribution organization.
- PP. "Primary Gyratory Crusher Business" means Respondent Metso's business of researching, designing, developing, engineering, manufacturing, constructing, distributing, marketing, selling, and providing after-sales support for, Primary Gyratory Crushers, including, but not limited to, the following model designations: Morgardshammer BS, Nordberg GY and Nordberg XP.
- QQ. "Primary Gyratory Crusher Employees" means all of those individuals employed by Respondent Metso with responsibility for the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales or after-sales support of Primary Gyratory Crushers, who directly participated (irrespective of the portion of working time involved) in the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales, or after-sales support of Primary Gyratory Crushers worldwide within the eighteen (18) month period immediately prior to the Closing Date.
- RR. "Product(s)" means Cone Crushers, Jaw Crushers, Grinding Mills, and Primary Gyratory Crushers.
- SS. "Product Intellectual Property" means all worldwide (1) Product Patents, (2) Product Trademarks, (3) Manufacturing Technology, (4) all copyrights in and to the Product Marketing Materials, (5) all other Intellectual

Decision and Order

Property relating to a Product, and (6) all Confidential Business Information as of the Closing Date.

- TT. “Product Marketing Materials” means all marketing materials used anywhere in the world with respect to the Products as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, price lists, mailing lists, sales materials, marketing information (e.g., customer sales and competitor data), promotional materials and other materials associated with the Products.
- UU. “Product Registrations” means all registrations, permits, licenses, consents, authorizations and other approvals, and pending applications and requests therefor, required by applicable Agencies relating to the research, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of the Products worldwide.
- VV. “Product 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 by and associated therewith, for a Product. *Provided, however*, that Product Trademarks do not include the trade names, trademarks or logos “Metso,” “Nordberg,” “Svedala,” “Svedala Gold,” “Allis Minerals Systems,” “Universal,” “Superior” and “Faco”.
- WW. “Rod Mill” means a Grinding Mill utilizing a horizontal tube design that employs a tumbling charge of steel rods to break rocks down into smaller particles by trapping and crushing rocks between the rods as the mill rotates.
- XX. “Sandvik Share Purchase Agreement” means the *Share Purchase Agreement* by and between Metso Corporation and Sandvik AB (publ) dated June 7, 2001, as amended,

Decision and Order

which is contained in non-public Appendix III attached to this Order.

- YY. “Semi-Autogenous Mill” means a Grinding Mill utilizing a horizontal tube design that breaks rocks down into smaller particles using a combination of rock-on-rock impacts and steel media-on-rock impacts.

II.

IT IS FURTHER ORDERED that:

- A. Not later than twenty (20) Business Days after the Acquisition is consummated, Respondents shall divest the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets as ongoing businesses to Sandvik pursuant to and in accordance with the Sandvik Share Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission as the Divestiture Agreement for the Cone Crusher Assets, Jaw Crusher Assets and the Primary Gyratory Crusher Assets, is incorporated by reference into this Order and made part hereof as non-public Appendix III. If Respondents do not divest the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets to Sandvik within twenty (20) Business Days after the Acquisition is consummated, the Commission may appoint a trustee to divest the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets. Provided, however, that if Respondents have divested the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets to Sandvik prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Sandvik is not an acceptable

Decision and Order

purchaser of the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Sandvik and the Commission may appoint a trustee to divest the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets to a Commission-approved Acquirer.

- B. Failure by Respondents to comply with all terms of the Sandvik Share Purchase Agreement, if approved by the Commission, shall constitute a failure to comply with this Order. Any Divestiture Agreement between Respondents (or a trustee appointed pursuant to Paragraph V of this Order) and an Acquirer of the Cone Crusher Assets, Jaw Crusher Assets and Primary Gyratory Crusher Assets that has been approved by the Commission shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.
- C. Respondents shall waive any and all rights to bring legal proceedings or take other legal action against the Commission-approved Acquirer, or any third-party authorized by the Commission-approved Acquirer to provide spare and wear parts for the Classic Products to the Commission-approved Acquirer, alleging infringement of Intellectual Property or Manufacturing Technology rights in connection with the Commission-approved Acquirer's research, design, development, engineering, manufacturing, constructing, distributing, marketing or sale of spare and wear parts for the Classic Products. PROVIDED THAT Respondents do not waive any rights to bring such proceedings or take such action based on a violation by the Commission-approved Acquirer of trademark or tradename rights, Respondents acknowledging for purposes of this proviso that it will not be a violation of trademark or

Decision and Order

tradename rights for the Commission-approved Acquirer to fairly and accurately describe such spare and wear parts as being for use with the Classic Products.

- D. Respondents shall include in any Divestiture Agreement related to the Jaw Crusher Assets the following provisions, and Respondents shall commit to satisfy the following:
1. Respondents shall Contract Manufacture and deliver to the Commission-approved Acquirer in a timely manner and under reasonable terms and conditions, a supply of Jawmaster model Jaw Crushers, for a period of years sufficient to allow the Commission-approved Acquirer to manufacture Jaw Crushers independently of Respondents. The Contract Manufacture agreement shall specify an exact monetary price for each make and model of Jawmaster model Jaw Crusher. Respondents shall provide a detailed explanation of all cost components, including, but not limited to, the specific amount, categories and allocation methodologies of costs for each make and model of Jawmaster model Jaw Crusher to staff of the Commission.
 2. After Respondents commence delivery of Jaw Crushers to the Commission-approved Acquirer pursuant to a Divestiture Agreement and for the term of the Contract Manufacture related to Jaw Crushers, Respondents will make inventory of Jawmaster model Jaw Crushers available for sale or resale only to the Commission-approved Acquirer.
 3. Respondents shall make representations and warranties that Respondents will hold harmless and indemnify the Commission-approved Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver Jawmaster model Jaw Crushers in a timely manner as required by the Divestiture Agreement unless Respondents can demonstrate that their failure was

Decision and Order

entirely beyond the control of the Respondents and in no part the result of negligence or willful misconduct by Respondents.

4. During the term of the Contract Manufacture between Respondents and the Commission-approved Acquirer, upon request of the Commission-approved Acquirer or the Interim Monitor, Respondents shall make available to the Interim Monitor all records that relate to the manufacture of Jawmaster model Jaw Crushers.
- E. Respondents shall submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information relating to the Cone Crusher Business, the Jaw Crusher Business, and the Primary Gyratory Crusher Business.
- F. Respondents shall not use, directly or indirectly, any Confidential Business Information relating to the Cone Crusher Business, Jaw Crusher Business, and Primary Gyratory Crusher Business, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer. Notwithstanding the foregoing, Respondents shall be permitted to disclose any such Confidential Business Information to the extent legally required or necessary for obtaining appropriate regulatory licenses or approvals or responding to Agency inquiries, to the extent necessary to permit Respondents to comply with obligations under the Divestiture Agreements and this Order, or as required by a court of competent jurisdiction.
- G. For a period of one (1) year following the Closing Date, Respondents shall not, directly or indirectly, solicit or otherwise attempt to induce any employees of the Commission-approved Acquirer with any amount of responsibility relating to Cone Crushers, Jaw Crushers or Primary Gyratory Crushers who are former employees of

Decision and Order

Respondents to terminate their employment relationship with the Commission-approved Acquirer; provided, however, a violation of this provision will not occur if: (i) Respondents advertise for employees in newspapers, trade publications or other media not targeted specifically at the employees of the Commission-approved Acquirer, (ii) Respondents hire employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this paragraph, or (iii) the Commission-approved Acquirer has terminated the individual's employment or has otherwise granted a release to the individual to permit the individual to be employed by the Respondents.

- H. For a period of six (6) months following the Closing Date, Respondents shall not interfere with the employment by the Commission-approved Acquirer of any Cone Crusher Employees, Jaw Crusher Employees or Primary Gyratory Crusher Employees; shall not offer any incentive to such employees to decline employment with the Commission-approved Acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any confidentiality provisions relating to the Products or any non-compete or confidentiality provisions of employment or other contracts with the Respondents that would affect the ability of those individuals to be employed by the Commission-approved Acquirer.
- I. Respondents shall secure, prior to divestiture, all consents and waivers from all private entities that are necessary for the divestiture of the Cone Crusher Assets, Jaw Crusher Assets or Primary Gyratory Crusher Assets, or for the continued research, development, engineering, manufacturing, construction, distribution, sale, or marketing of Cone Crushers, Jaw Crushers, or Primary Gyratory Crushers by the Commission-approved Acquirer.

Decision and Order

- J. Respondents shall require, as a condition of continued employment post-divestiture, that each Cone Crusher Employee, Jaw Crusher Employee and Primary Gyratory Crusher Employee sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information (including, without limitation, all field experience) related to the Cone Crusher Business, Jaw Crusher Business, or Primary Gyratory Crusher Business strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents. Such agreement shall provide for the following: (i) restrictions on the use of trade secrets and Confidential Business Information; (ii) retention of such information; (iii) appropriate conduct relating to information that could be used to the detriment of competitors; and (iv) sanctions for violation of the terms of the notification. (A copy of this confidentiality agreement will be in a form substantially similar to Schedule 1 of the Sandvik Share Purchase Agreement). Respondents shall send such agreement by e-mail with return receipt requested or similar transmission, and keep a file of such return receipts for one (1) year after the Closing Date. Respondents shall provide a copy of such agreement to the Commission-approved Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certificate to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondents shall make available at the Commission-approved Acquirer's request copies of all certifications, notifications and reminders sent to Respondents' personnel.
- K. At the time of divestiture, and at the Commission-approved Acquirer's option, Respondents shall make available to the Commission-approved Acquirer such personnel, assistance and training as the Commission-approved Acquirer might

Decision and Order

reasonably need to transfer the Cone Crusher Assets, Jaw Crusher Assets and Primary Gyratory Crusher Assets and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer, until the Commission-approved Acquirer is fully capable of independently manufacturing the Cone Crushers, Jaw Crushers, and Primary Gyratory Crushers. At the time of divestiture, and at the Commission-approved Acquirer's option, Respondents shall also divest any additional, incidental assets of Respondents and make any further arrangements for transitional services within the first twelve (12) months after divestiture that may be reasonably necessary to assure the viability and competitiveness of the Cone Crusher Assets, Jaw Crusher Assets and Primary Gyratory Crusher Assets.

- L. Pending divestiture of the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets except for ordinary wear and tear.
- M. The purpose of the divestiture of the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets is to ensure the continued use of the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets in the same business in which the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

Decision and Order

III.

IT IS FURTHER ORDERED that:

- A. Not later than twenty (20) Business Days after the Acquisition is consummated, Respondents shall divest the Grinding Mill Assets as an ongoing business to Outokumpu pursuant to and in accordance with the Outokumpu Asset Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission as the Divestiture Agreement for the Grinding Mill Assets, is incorporated by reference into this Order and made part hereof as non-public Appendix II. If Respondents do not divest the Grinding Mill Assets to Outokumpu within twenty (20) Business Days after the Acquisition is consummated, the Commission may appoint a trustee to divest the Grinding Mill Assets. Provided, however, that if Respondents have divested the Grinding Mill Assets to Outokumpu prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Outokumpu is not an acceptable purchaser of the Grinding Mill Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Outokumpu and the Commission may appoint a trustee to divest the Grinding Mill Assets to a Commission-approved Acquirer.
- B. Failure by Respondents to comply with all terms of the Outokumpu Asset Purchase Agreement, if approved by the Commission, shall constitute a failure to comply with this Order. Any Divestiture Agreement between Respondents (or a trustee appointed pursuant to Paragraph V of this Order) and an Acquirer of the Grinding Mill Assets that has been approved by the Commission shall be deemed incorporated by reference into this Order, and any failure by

Decision and Order

Respondents to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.

- C. Respondents shall submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information relating to the Grinding Mill Business.
- D. Respondents shall not use, directly or indirectly, any Confidential Business Information relating to the Grinding Mill Business, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer. Notwithstanding the foregoing, Respondents shall be permitted to disclose any such Confidential Business Information to the extent legally required or necessary for obtaining appropriate regulatory licenses or approvals or responding to Agency inquiries, to the extent necessary to permit Respondents to comply with obligations under the Divestiture Agreement and this Order, or as required by a court of competent jurisdiction.
- E. For a period of one (1) year following the Closing Date the divestiture is accomplished, Respondents shall not, directly or indirectly, solicit or otherwise attempt to induce any employees of the Commission-approved Acquirer with any amount of responsibility relating to Grinding Mills who are former employees of Respondents to terminate their employment relationship with the Commission-approved Acquirer; provided, however, a violation of this provision will not occur if (i) Respondents advertise for employees in newspapers, trade publications or other media not targeted specifically at the employees of the Commission-approved Acquirer, (ii) Respondents hire employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this paragraph, or (iii) the Commission-approved Acquirer has terminated the individual's employment or has otherwise

Decision and Order

granted a release to the individual to permit the individual to be employed by the Respondents.

- F. For a period of six (6) months following the Closing Date, Respondents shall not interfere with the employment by the Commission-approved Acquirer of any Grinding Mill Employees; shall not offer any incentive to such employees to decline employment with the Commission-approved Acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any confidentiality provisions relating to the Products or any non-compete or confidentiality provisions of employment or other contracts with the Respondents that would affect the ability of those individuals to be employed by the Commission-approved Acquirer.
- G. Respondents shall secure, prior to divestiture, all consents and waivers from all private entities that are necessary for the divestiture of the Grinding Mill Assets, or for the continued research, development, engineering, manufacturing, construction, distribution, marketing, sale, after-sales support, marketing or distribution of Grinding Mills by the Commission-approved Acquirer.
- H. Respondents shall require, as a condition of continued employment post-divestiture, that each Grinding Mill Employee sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information (including, without limitation, all field experience) related to the Grinding Mill Business, strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents. Such agreement shall provide for the following: (i) restrictions on the use of trade secrets and Confidential Business Information; (ii) retention of such information; (iii) appropriate conduct relating to

Decision and Order

information that could be used to the detriment of competitors; and (iv) sanctions for violation of the terms of the notification. (A copy of this confidentiality agreement will be in a form substantially similar to Schedule A of the Outokumpu Asset Purchase Agreement). Respondents shall send such agreement by e-mail with return receipt requested or similar transmission, and keep a file of such return receipts for one (1) year after the Closing Date.

Respondents shall provide a copy of such agreement to the Commission-approved Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certificate to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondents shall make available at the Commission-approved Acquirer's request copies of all certifications, notifications and reminders sent to Respondents' personnel.

- I. At the time of divestiture, and at the Commission-approved Acquirer's option, Respondents shall make available to the Commission-approved Acquirer such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the Grinding Mill Assets, and shall continue providing such personnel, assistance and training, at Respondents' cost, at the request of the Commission-approved Acquirer, until the Commission-approved Acquirer is fully capable of independently producing Grinding Mills. At the time of divestiture, and at the Commission-approved Acquirer's option, Respondents shall also divest any additional, incidental assets of Respondents and make any further arrangements for transitional services within the first twelve (12) months after divestiture that may be reasonably necessary to assure the viability and competitiveness of the Grinding Mill Assets.
- J. Pending divestiture of the Grinding Mill Assets, Respondents shall take such actions as are necessary to

Decision and Order

maintain the viability and marketability of the Grinding Mill Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Grinding Mill Assets except for ordinary wear and tear.

- K. The purpose of the divestiture of the Grinding Mill Assets is to ensure the continued use of the Grinding Mill Assets in the same business in which the Grinding Mill Assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Divestiture Agreements. The Commission may appoint one or more Interim Monitors to assure Respondents' compliance with the requirements of Paragraphs II and III of this Order, and the related Divestiture Agreements.
- B. If one or more Interim Monitors are appointed pursuant to Paragraph IV. A. of this Order, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
1. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the

Decision and Order

identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

2. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the terms of this Order and with the relevant Divestiture Agreement(s) made a part of this Order, 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 this Order and in consultation with the Commission.
3. Within ten (10) days after appointment of the Interim Monitor, Respondents 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 Respondents' compliance with the terms of this Order and with the relevant Divestiture Agreement(s) in a manner consistent with the purposes of this Order.
4. The Interim Monitor shall serve until the last obligation under each of the Divestiture Agreements has been fully performed and each of the Commission-approved Acquirers pursuant to Paragraphs II and III of this Order (or as otherwise specified by the Commission) is fully capable of independently manufacturing and selling the Product(s) acquired pursuant to a Divestiture Agreement; provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of this Order.
5. The Interim Monitor shall have full and complete access to Respondents' personnel, books, records, documents, facilities and technical information relating to the research, development, engineering, and manufacture of the relevant Products, or to any other relevant information, as the Interim Monitor may reasonably request, including, but not limited

Decision and Order

to, all documents and records kept in the normal course of business that relate to the manufacture of the relevant Products and all materials and information relating to Agency approvals. Respondents shall cooperate with any reasonable request of the Interim Monitor. Respondents shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with this Order and the relevant Divestiture Agreement(s).

6. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Commission may, among other things, require the Interim Monitor to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Interim Monitor's duties. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities. The Interim Monitor shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
7. Respondents 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 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.

Decision and Order

8. If the Commission determines that the 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 IV.A. of this Order.
 9. The Commission may on its own initiative or at the request of the Interim Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the relevant Divestiture Agreement(s).
 10. Respondents shall report to the Interim Monitor in accordance with the requirements of Paragraph VI.A. of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to it by the Respondents, and any reports submitted by the relevant Commission-approved Acquirer(s), with respect to the performance of Respondents' obligations under the relevant Divestiture Agreement(s). Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning compliance by Respondents with the provisions of this Order and the relevant Divestiture Agreement(s). These responsibilities of the Interim Monitor shall continue until the last obligation under the relevant Divestiture Agreement(s) has been fully performed, unless otherwise directed by the Commission.
 11. Respondents may require the Interim Monitor to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- C. The Interim Monitor(s) appointed pursuant to Paragraph III.A. of the Order to Maintain Assets may be the same person(s) appointed as Interim Monitor(s) pursuant to Paragraph IV.A. of the Decision and Order in this matter, and/or as Divestiture

Decision and Order

Trustee(s) pursuant to Paragraph V.A. of the Decision and Order in this matter.

V.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations specified in Paragraphs II through IV of this Order, the Commission may appoint a trustee or trustees to divest or transfer the assets required to be divested or transferred pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph, as applicable. The Commission may appoint a different Divestiture Trustee to accomplish each of the divestitures described in Paragraphs II and III, respectively. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph 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(*I*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph V.A. of this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent

Decision and Order

shall not be unreasonably withheld. The Divestiture 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 Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest or transfer the relevant assets that are required by this Order to be divested or transferred.
3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents 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 relevant divestiture(s) or transfer(s) required by the Order.
4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph V. B. 3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) 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.

Decision and Order

5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities relating to the relevant assets that are required to be divested by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). 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 Divestiture Trustee, by the court.
6. The Divestiture 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 at no minimum price. The divestiture(s) 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 Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) Business Days of receiving notification of the Commission's approval.
7. The Divestiture 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 Divestiture Trustee shall have the authority to employ, at the cost

Decision and Order

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 Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, 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.

8. Respondents 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.
9. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute Divestiture Trustee shall be appointed in the same manner as provided in Paragraph V.A. of this Order.
10. 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

Decision and Order

issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.

11. In the event that the Divestiture Trustee determines that he or she is unable to divest the assets required to be divested pursuant to each of the relevant Paragraphs in a manner that preserves their marketability, viability and competitiveness and ensures their continued use in the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale, or after-sales support of the relevant Product or Products, the Divestiture Trustee may divest such additional assets related to the relevant Product or Products of the Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.
12. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
13. The Divestiture Trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).
14. Respondents may require the Divestiture Trustee to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

C. The Divestiture Trustee(s) appointed pursuant to V.A. of this Order may be the same person(s) appointed as Interim Monitor(s) pursuant to Paragraph IV.A. of this Order.

Decision and Order

VI.**IT IS FURTHER ORDERED** that:

- A. Respondents shall submit to the Commission (with simultaneous copies to the Interim Monitor(s) and the Divestiture Trustee(s), as appropriate) verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. These reports are due as follows: the initial report is due thirty (30) days after the date this Order becomes final; the second report is due sixty (60) days after the initial report; and all subsequent reports are due every ninety (90) days thereafter until Respondents have fully complied with Paragraphs II through V of this Order. Respondents shall include in their 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 V of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. One (1) year from the date this Order becomes final, annually for the next five (5) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor

Decision and Order

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.

VIII.

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 made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents 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 Respondents relating to compliance with this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on October 19, 2021.

By the Commission, Chairman Muris not participating.

Decision and Order

**[Non-Public Appendices I, II, and III Redacted From Public
Record Version]**

Order

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition of Respondent Svedala Industri AB (“Svedala”) by Respondent Metso Oyj (“Metso”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge 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 Orders (“Consent Agreement”), containing the proposed Decision and Order, 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 determined to accept the executed Consent Agreement and to place the Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Metso is a corporation organized, existing and doing business under and by virtue of the laws of Finland, with its office and principal place of business located at Fabianinkatu 9 A, P.O. Box 1220, FIN-00101, Helsinki, Finland. Metso’s principal

Order

subsidiary in the United States is located at 133 Federal Street, Suite 302, Boston, MA 02110.

2. Respondent Svedala is a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its office and principal place of business located at Kaptensgatan 1, Box 4004, SE-203 11, Malmö, Sweden. Svedala's principal subsidiary in the United States is located at 20965 Crossroads Circle, Waukesha, WI, 53186.

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 to Maintain Assets, the definitions used in the Consent Agreement and the attached Decision and Order shall apply.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

- A. Respondents shall take such actions as are reasonably necessary to maintain the viability, marketability, and competitiveness of the Cone Crusher Assets, Grinding Mill Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets, hereinafter collectively referred to as "Assets," and to prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer or impairment of any of the Assets, except for ordinary wear and tear and as would otherwise occur in the ordinary course of business.
- B. Respondents shall provide all Cone Crusher Employees, Grinding Mill Employees, Jaw Crusher Employees, and Primary Gyratory Crusher Employees, with reasonable

Order

- financial incentives to continue in their positions until the Closing Date. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing Date for the divestiture of the Assets has occurred, including the regularly scheduled raises and bonuses, and a vesting of all pension benefits (as permitted by law).
- C. Respondents shall adhere to and abide by the Divestiture Agreements incorporated by reference into this Order to Maintain Assets and made a part hereof.

III.

IT IS FURTHER ORDERED that:

- A. At any time after the Commission issues this Order to Maintain Assets, the Commission may appoint one or more Interim Monitors to assure that Respondents expeditiously comply with their obligations relating to the Assets pursuant to this Order to Maintain Assets, and to the Consent Agreement, the Decision and Order and the related Divestiture Agreements.
- B. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities and responsibilities of any Interim Monitor appointed pursuant to Paragraph III.A.:
1. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Interim Monitor within ten (10) days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
 2. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the terms of this Order to Maintain Assets and of any corresponding terms in the Consent Agreement and the Decision and Order.

Order

3. Within ten (10) days after appointment of the Interim Monitor, Respondents 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 Respondents' compliance with the terms of this Order to Maintain Assets and, as applicable, the Consent Agreement and the Decision and Order.
4. The Interim Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order to Maintain Assets.
5. The Interim Monitor shall have full and complete access, subject to any legally recognized privilege of Respondents, to Respondents' personnel, books, records, documents, facilities and technical information relating to any of the Assets or to any other relevant information, as the Interim Monitor may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Assets. Respondents shall cooperate with any reasonable request of the Interim Monitor. Respondents shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with this Order to Maintain Assets and, as applicable, the Consent Agreement and the Decision and Order.
6. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, 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 Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
7. Respondents 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

Order

reasonable fees of counsel and other 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.

8. If the Commission determines that the 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.A. of this Order to Maintain Assets.
 9. The Commission may on its own initiative or at the request of the Interim Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets and, as applicable, the Consent Agreement and the Decision and Order.
 10. The Interim Monitor shall report in writing to the Commission concerning compliance by Respondents with the provisions of this Order to Maintain Assets and, as applicable, the Consent Agreement and the Decision and Order, within twenty (20) days from the date of appointment and every thirty (30) days thereafter until the Respondents have completed all the divestitures required by the Decision and Order.
 11. Respondents may require the Interim Monitor to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- C. The Interim Monitor(s) appointed pursuant to Paragraph III.A. of this Order to Maintain Assets may be the same person(s) appointed as Interim Monitor(s) pursuant to Paragraph IV.A. of the Decision and Order in this matter, and/or as Divestiture Trustee(s) pursuant to Paragraph V.A. of the Decision and Order in this matter.

Order

IV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate 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 to Maintain Assets.

V.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents 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 Respondents relating to compliance with this Order to Maintain Assets; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

Order

- B. The day after all of the divestitures or transfers of the Assets, as described in and required by the Decision and Order, are completed.

By the Commission, Chairman Muris not participating.

Analysis

**Analysis of Agreement Containing Consent Orders to Aid
Public Comment**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Metso Oyj (“Metso”) and Svedala Industri AB (“Svedala”), which is designed to remedy the anticompetitive effects resulting from Metso’s acquisition of Svedala. Under the terms of the Consent Agreement, Metso and Svedala will be required to divest Metso’s global primary gyratory crusher and grinding mills businesses and Svedala’s global cone crusher and jaw crusher businesses. The three crusher businesses will be divested to Sandvik AB (“Sandvik”). The grinding mill business will be divested to Outokumpu Oyj (“Outokumpu”). Both divestitures will take place no later than twenty (20) days from the date Metso consummates its acquisition of Svedala.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order.

Pursuant to a cash tender offer announced on June 21, 2000, Metso proposes to acquire all of the issued and outstanding shares and convertible debentures of Svedala. The total value of the transaction is approximately \$1.6 billion. The Commission’s complaint alleges that the proposed acquisition, if consummated, would violate 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, in the global markets for the research, development, manufacture and sale of: (1) cone crushers; (2) jaw crushers; (3) primary gyratory crushers; and (4) grinding mills.

Analysis

Metso, through its Metso Minerals (formerly known as Nordberg) subsidiary, and Svedala, are the two largest suppliers of rock processing equipment in the world. Rock processing equipment includes, among other products: (1) cone crushers; (2) jaw crushers; (3) primary gyratory crushers; and (4) grinding mills. Rock processing equipment is used by both aggregate and mineral producers to crush and pulverize large rock formations in order to manufacture aggregates and retrieve minerals. Aggregate and mineral producers use a series of different types of rock processing equipment in a circuit to crush the rock into the desired size, shape and form. Customers of these products state that they purchase the type and size of rock processing equipment that is optimal for their circuit and, because of the unique performance characteristics of each type and size of equipment, there is little opportunity to switch to alternative equipment.

The global markets for cone crushers, jaw crushers, primary gyratory crushers and grinding mills are highly concentrated. If the proposed acquisition is consummated, Metso's market share would exceed 50 percent in each of the global markets for: (1) cone crushers; (2) jaw crushers; (3) primary gyratory crushers; and (4) grinding mills. In some of these markets, Metso and Svedala are the largest and second largest suppliers. If the acquisition is consummated, Metso would have a market share many times higher than its next-closest competitor.

Metso and Svedala regularly bid against each other for rock processing equipment. By eliminating competition between these two leading suppliers, the proposed acquisition would allow Metso to exercise market power unilaterally for certain bids, thereby increasing the likelihood that purchasers of cone crushers, jaw crushers, primary gyratory crushers and grinding mills would be forced to pay higher prices and that innovation in these markets would decrease. Metso's proposed acquisition of Svedala would also increase the likelihood that the remaining suppliers of cone crushers, jaw crushers, primary gyratory crushers and grinding mills could collude to the detriment of customers in the relevant markets.

Analysis

Significant impediments to new entry exist in each of the global markets for cone crushers, jaw crushers, primary gyratory crushers and grinding mills. First, a supplier must design and develop a prototype of the particular type of rock processing equipment, which requires significant amounts of money and time. After a new prototype is developed, suppliers devote additional money and time to testing the prototype at a customer's mine or quarry. The testing stage often lasts as long as two years because many flaws cannot be detected until the equipment has been in continuous operation for a significant period of time. It is imperative that the rock processing equipment that suppliers offer to customers have a track record of reliability and high performance because failure of such equipment would substantially decrease or halt production at a site, costing the customer thousands of dollars an hour in production losses. The steps involved in developing a prototype, testing it, and gaining customer acceptance for a new piece of equipment are difficult, expensive and time-consuming. For these reasons, new entry into the markets for cone crushers, jaw crushers, primary gyratory crushers and grinding mills would not be accomplished in a timely manner or be likely to occur at all even if prices increased substantially after the proposed acquisition.

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the global markets for cone crushers, jaw crushers, primary gyratory crushers and grinding mills by requiring Metso to divest its worldwide primary gyratory crusher and grinding mill businesses and by requiring Svedala to divest its worldwide cone crusher and jaw crusher businesses. Pursuant to the Consent Agreement, the three crusher businesses will be divested to Sandvik. The grinding mill business will be divested to Outokumpu. Both divestitures will take place no later than twenty (20) days from the date Metso consummates its acquisition. If the Commission determines that Sandvik or Outokumpu is not an acceptable buyer or that the manner of either divestiture is not acceptable, Metso and Svedala must unwind the sale(s) and divest the crusher businesses or the grinding mill business to a Commission-approved buyer. Should they fail to do

Analysis

so, the Commission may appoint a trustee to divest the crusher businesses or the grinding mill business.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems. The Commission is satisfied that both Sandvik and Outokumpu are well-qualified acquirers of the divested assets. Sandvik is a publicly-traded Swedish corporation and a leading global supplier of drilling and excavation machinery, equipment and tools for mining and construction industries. Outokumpu is a diversified Finnish metals corporation involved primarily in the mining, production and fabrication of steel, chromium, zinc, copper and nickel. Both Sandvik and Outokumpu have the necessary industry expertise to replace the competition that existed prior to the proposed acquisition. Furthermore, Sandvik and Outokumpu do not pose separate competitive issues as acquirers of the divested assets.

The Consent Agreement contains several provisions designed to ensure that the divestitures of the crusher businesses and the grinding mill business are successful. The Consent Agreement requires Metso and Svedala to provide incentives to all of the employees that Sandvik and Outokumpu want to hire to continue in their positions until the divestitures are accomplished. For a period of one (1) year from the date the divestitures of the businesses are accomplished, Metso and Svedala are prohibited from soliciting or inducing any employees or agents of the rock processing equipment businesses involved in the divestitures to terminate their employment with Sandvik or Outokumpu. Furthermore, in order to enable Sandvik and Outokumpu to develop and manufacture rock processing equipment in the same manner and quality achieved by Metso and Svedala, the Consent Agreement requires Metso and Svedala for a period of one (1) year to provide technical assistance and training at cost to Sandvik and Outokumpu.

Analysis

Metso and Svedala are also required to provide transitional manufacturing services for the production of jaw crushers to enable Sandvik to deliver jaw crushers to customers without delay. The transitional manufacturing provision only covers the production of jaw crushers because Svedala currently manufactures a substantial portion of its jaw crushers in its Brazilian facility, which will not be divested. Svedala also manufactures some jaw crushers at its Swedish facility which will be divested under the proposed Consent Agreement. Less than 24 months ago, Svedala manufactured all of its jaw crushers in the Swedish facility. Thus, the primary production assets for the manufacture of jaw crushers already exist in the Swedish facility. Sandvik will also manufacture all of its jaw crushers at the Swedish facility. The Commission will appoint an Interim Monitor to oversee the transfer of Svedala's jaw crusher assets located in Brazil and to insure compliance with the transitional manufacturing agreement. The Interim Monitor has the requisite capability and applicable business knowledge to supervise the proper transfer of divested assets and monitor the critical manufacturing and supply activities of Metso and Svedala. Thus, the transitional manufacturing agreement, in conjunction with the Interim Monitor, provides a guarantee to Sandvik that its production of jaw crushers will be seamless and uninterrupted after the divestiture.

In order to ensure that the Commission remains informed about the status of the crushing businesses and the grinding mill business pending divestiture, and about the efforts being made to accomplish the divestitures, the Consent Agreement requires Metso and Svedala to file reports with the Commission within thirty (30) days of the date they sign the Consent Agreement, and periodically thereafter, until the divestitures are accomplished.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify in any way its terms.

Complaint

IN THE MATTER OF

FANBUZZ, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4026; File No. 0123151

Complaint, November 19, 2001--Decision, November 19, 2001

This consent order addresses practices used by Respondent FanBuzz, Inc. in connection with the sale of textile products by means of an Internet catalog. The order, among other things, prohibits the respondent from violating the Textile Fiber Products Identification Act, and Commission rules and regulations implementing the requirements of the statute. The order also requires the respondent to distribute copies of the order to certain company officials and employees.

Participants

For the Commission: *Carol Jennings, Elaine D. Kolish, and Keith Anderson.*

For the Respondent: *Martin J. Neville, Neville Peterson, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that FanBuzz, Inc. (“respondent”), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, and the Textile Fiber Products Identification Act, 15 U.S.C. § 70 *et seq.* (“Textile Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Minnesota corporation with its principal office or place of business at 10729 Bren Road East, Minnetonka, Minnesota 55343.
2. Respondent is an Internet seller of clothing for men and women. Respondent has advertised, offered for sale, sold, and